

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

75-6037

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**United States Court of Appeals**

**For the Second Circuit.**

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HANNA B. WAKIM,

*Plaintiff-Appellant,*

-vs.-

UNITED STATES OF AMERICA,

*Defendant-Appellee.*

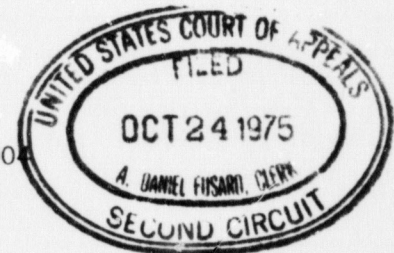
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**Joint Appendix**

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IN ADMIRALTY

C. Form No. 106 Rev.

Jury demand date:  
JUDGE GRIESA

70 2848

TITLE OF CASE

## ATTORNEYS

HANNA B. WAKIM

VS

UNITED STATES OF AMERICA

For plaintiff:

KLEIN & STERLING  
15 Park Row, NYC, NY 10038

For defendant:

19 Rector St. NY 10006 WH 4-8766  
Zock, Petrie, Reid, Curtin & Byrnes  
19 Rector St. N.Y. 10006  
(Atty for U.S.A.)

[illegible]

JUDGE GRIESA

70 CIV. 28

DATE	PROCEEDINGS	Date of Judgment
Jul 22-70	Filed complaint issued summons	\$15
Jul 29, 70	Filed summons with marshal's return. Served U.S.A. by Emily Kopeck clerk in dept. of Justice, and by mailing copies by certified mail to Atty. Gen'l Wash. D.C. on 7-9-70	\$3.36
Sept. 25-70	Filed Notice of Oral and Physical Examination.	
Sept. 25-70	Filed ANSWER of U.S.A. to complaint.	2752
Mar 5, 71	Filed plttf interrogs.	
May 10-71	Filed Notice for discovery and inspection.	
Jun 28-71	Filed Notice of Motion re: Answer -interrogs. Ret. 7/22/71.	
Jun 28-71	Filed Memorandum of Law.	
Jul 22-71	Filed memo-endorsed on plttf's motion filed 6-28-71 Answer interrogs: Motion withdrawn. So ordered. Frankel, J.	
Dec. 28-71	Filed plttf's NOTE OF ISSUE & statement of readiness.	
May. 5-72	Filed stip & order that Zock, Petrie, Reid, Curtin & Byrnes are, substituted as of counsel to Whitney North Seymour, U.S. Attorney. in place of Zock, Petrie, Sheneman & Reid. So ordered. Lasker, J.	
Jan. 4-74	Filed deft's notice to take deposition of Burtrum Vulliet, et al	
Jan. 4-74	Filed deposition of Homer A. Tidwell, Jr.--mailed notice.	
Jan. 4-74	Filed deposition of Robert M. Truitt--mailed notice.	
Jan. 4-74	Filed deposition of Burtrum L. Vulliet,--mailed notice.	
1-4-74	<i>Pre-trial hearing held</i>	
Feb. 14-74	Filed deft's notice to take deposition of Wilton B. Jackson	
2-14-74	<i>pre-trial before Solomon, J.</i>	
Feb. 27-74	Filed defts answers to plttfs interrogs.	
Mar. 9-74	Before Solomon, J.--Non-Jury trial begun and concluded--Decision reserved	
Jan. 27-75	Filed Memorandum Opinion #41815. Plttf has failed to prove he was injured in an accident on the SS Sioux Falls Victory, on 11-28-69, or at any other time during the voyage of that vessel, as indicated. There is no merit in the contention that he is entitled to counsel fee & expenses, etc., & do not pass on whether he may be entitled to some maintenance in addition to the amounts he has already rec'd. This opinion shall constitute findings of fact & conclusions of law. Counsel for deft shall prepare an appropriate judgment in accordance with this memorandum opinion.....SOLOMON, J. m/n	
Jan. 30-75	Filed Final Judgment & Order that plttf take nothing, & the action be dismissed on the merits, & deft's to recover of the plttf his costs of action.....Clerk. m/n	
Feb. 26-75	Filed plttfs notice of appeal to the USCA from the judgment entered on 1-30-75. Copy mailed to Zock Petrie Reid Curtin & Byrnes, 19 Rector St., NYC 10006.	
Apr. 9-75	Filed Amended Judgment based on findings of fact & conclusions of law in Opinion dated 1-24-75, of all plttfs claims, other than the claim for maintenance which is reserved, are dismissed without costs. Judgment is ordered entered ther being no just reason for delay.....SOLOMON, J. Judgment Entered, Clerk m/n	
Apr. 28-75	Filed plttfs notice of appeal from the amended judgment dated 4-9-75. Copy sent to Zock Petrie Reid Curtin & Byrnes, Esqs. Attys for Deft-Appelles, 19 Rector St., New York, N.Y. 10006.	
Jul 30-75	<i>Filed Transcript of Proceedings before J. Solomon</i>	
Jan 7-75	Filed transcript dated 10-9-74.	
May 1-75	Filed deposition of Charles H. Gatter.	
May 12, 75	Filed stipulation & order of dismissal only of cause of action for Maintenance having been settled. Griesa, J.	



1                   IN THE UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF NEW YORK  
3

4       HANNA B. WAKIM,

5                               Plaintiff,

6                   vs.

70 CIV. 2848

7       UNITED STATES OF AMERICA,

8                               Defendant  
9

10                   DEPOSITION UPON ORAL EXAMINATION OF  
11                               HOMER A. TIDWELL, JR.  
12

13                   BE IT REMEMBERED, that on Tuesday, December 4,  
14       1973, beginning at the hour of 3:45 o'clock p.m. thereof, at  
15       1505 Norton Building, Seattle, King County, Washington, before  
16       me, Ada Rowan, Court Reporter and Notary Public in and for  
17       the State of Washington, personally appeared Homer A. Tidwell,  
18       Jr., the witness herein;

19                   SAM L. LEVINSON, ESQ. (Levinson, Friedman, Vhugen,  
20       Duggan & Bland) appearing for and on behalf of the plaintiff;

21                   ROBERT V. HOLLAND, ESQ. (Bogle, Gates, Dobrin,  
22       Wakefield & Long) appearing for and on behalf of the  
23       defendant.

24                   WHEREUPON, the following proceedings were had and  
25       testimony taken, to-wit:

ADA ROWAN  
COURT REPORTER  
SEATTLE, WASHINGTON



1 MR. HOLLAND: Three depositions are being taken  
2 today in the above-entitled matter. Notice of the  
3 taking of two of the witnesses who will be presented  
4 today is by way of notice served and filed in New York,  
5 referring particularly to the witnesses Vulliet and  
6 Tidwell.

7 And I will present to the Reporter the notice to  
8 be attached to the original of the deposition.

9 MR. LEVINSON: May we have the usual stipulation  
10 that all reservations except as to the form of the  
11 question and the responsiveness of the answer are to  
12 be reserved. Those two should be noted at this time.

13 MR. HOLLAND: I think that's pursuant to rule.

14 MR. LEVINSON: Yes.

15 - - -

16  
17 HOMER A. TIDWELL, JR., called as a witness herein, being  
18 first duly sworn, was examined  
19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HOLLAND:

22 Q Would you state your name, please.

23 A Homer A. Tidwell, Jr.

24 Q What is your age?

25 A Fifty-six.

1 Q What is your home address?  
2 A 7827 Flight Avenue, Los Angeles, California 90045.  
3 Q What is your present occupation?  
4 A Paymaster, Master Mates and Pilots International,  
5 Wilmington, California.  
6 Q How long have you held that position?  
7 A Two and a half years.  
8 Q Have you sailed in the past, Mr. Tidwell?  
9 A Yes.  
10 Q What license or ticket do you hold?  
11 A Purser.  
12 Q Have you sailed most of your working career?  
13 A No. I sailed from 1966 to 1970.  
14 Q What was your occupation before sailing?  
15 A I was real estate -- most recently before sailing I  
16 was a real estate broker.  
17 Q Any other different field particularly?  
18 A I was staff assistant in the engineering department  
19 for Hughes Aircraft for eleven years prior to 1962.  
20 Q Now when you started sailing in 1966, were you with  
21 any one company or several companies?  
22 A I got my seaman's papers and my certificate of registry  
23 and I was with Pacific Far East for a while as shore-  
24 side in the Port Purser's Office. Then I made two  
25 trips, and the last trip was in about March of 1967.



- 1 Q Did you ever serve on the Sioux Falls Victory?
- 2 A I served several times. The dates I wouldn't remember.
- 3 Q All right. Maybe I can, to shorten this, I can refer
- 4 you to a voyage which the other witnesses have testi-
- 5 fied started on the east coast.
- 6 A Yes, I joined the ship in Jacksonville.
- 7 Q I see.
- 8 A That was the end of, I believe the end of September
- 9 1969.
- 10 Q All right. I think that's the same voyage which I
- 11 mentioned. I should ask -- is that the voyage that
- 12 eventually went Canal Zone, Vietnam and Okinawa?
- 13 A Right.
- 14 Q And you were purser on that ship, were you?
- 15 A Right.
- 16 Q Do you remember a member of the crew of that ship
- 17 whose name was Hanna Wakim?
- 18 A Yes, I remember.
- 19 Q What department was he in?
- 20 A He was in the deck department, ordinary seaman.
- 21 Q Were you aware, Mr. Tidwell, of an incident that we
- 22 have been told occurred to Mr. Wakim in the Canal
- 23 Zone?
- 24 A Yes, I'm aware of that incident.
- 25 Q In what way did you first gain knowledge of what had

1           happened ashore in the Canal Zone?

2    A       When the agent returned with Mr. Wakim.

3    Q       Returned to the vessel?

4    A       Vessel. I did not leave the vessel during the stay in  
5           the Canal Zone.

6    Q       When the agent returned then how did you find out  
7           about what had happened?

8    A       As I remember, he was returned to the vessel in the  
9           presence of the Master and myself.

10   Q       You mean Mr. Wakim was?

11   A       Mr. Wakim, right.

12   Q       I see. And what if anything did Mr. Wakim say about  
13           what had happened to him ashore?

14   A       Just that he had been robbed, and that he had spent  
15           the night in the police station and returned to the  
16           vessel by the agent.

17   Q       Was there any further conversation with Mr. Wakim at  
18           that time about the details of the incident?

19   A       As I remember it there probably was, not going into  
20           the full details of what happened, but just that he had  
21           been mugged and robbed and he was quite upset naturally.  
22           Not speaking too good English, he had a bit of a  
23           problem in understanding and conversing.

24   Q       It may be hard to put in words, but could you tell us  
25           how well you could talk to him with his native tongue?



1 A Well it was rather difficult, rather difficult.

2 Q All right. Did he leave the vessel at that time or  
3 remain aboard?

4 A After he was returned to the vessel by the agent he  
5 stayed on board the vessel.

6 Q Would you state whether or not to your knowledge at  
7 that time he was given an opportunity to remain ashore,  
8 or to leave the vessel?

9 A Yes. The agent did talk to the captain and myself  
10 with the idea that if he wanted to leave the vessel  
11 that he would make the arrangements, that he the agent  
12 would make the arrangements for Wakim to be repatriated  
13 to his home.

14 Q Was the agent in any way able to talk to him any better?

15 A No, not really. He was just trying to help, because  
16 Mr. Wakim was -- he had gone through a traumatic  
17 experience for him.

18 MR. LEVINSON. Anybody else.

19 THE WITNESS: Right.

20 A So I was with him a hundred per cent, you know, as  
21 far as -- but he appeared to be destined, and wanted  
22 to make the trip. He just wanted to make this trip,  
23 although it was his first trip.

24 By Mr. Holland:

25 Q He indicated some way then to you and the captain that

1 he wanted to stay aboard?

2 A Yes, he indicated he wanted to stay aboard -- he could  
3 make it.

4 Q All right. Then did he continue on the leg of the  
5 voyage from the Canal Zone to Vietnam?

6 A Yes, he continued.

7 Q Did you have any opportunity or occasion in your job  
8 to observe whether he did his regular work or not  
9 during that part of the voyage?

10 A Well it isn't really my duty to know whether they're  
11 working or not. However he was never relieved of his  
12 duty.

13 Q During that leg of the voyage again, did you as purser  
14 have any reason to deal with him or talk to him about  
15 any physical or medical problems?

16 A Well it seems that he was almost continually seasick.  
17 I remember he was seasick from the time we left Sunny  
18 Point, as soon as we pulled away from the dock.

19 Q In your job as purser did you also have duties with  
20 respect to the medical problems?

21 A I was assigned the medical duties for the vessel.

22 Q All right. What did you do for Mr. Wakim for his  
23 complaint of seasickness?

24 A Well I would give him either Marezine or Dramamine.  
25 Those were two things we used to carry.



1 Q Did anything else develop with Mr. Wakim about his  
2 physical condition other than what you mentioned?

3 A Not that I can recollect except if he had aches or  
4 pains I would give him aspirin or -- now I can't  
5 remember incidents where I would have done it. But it  
6 could have been and entries would have been made in  
7 the medical log to that nature.

8 Q Will you state whether or not the vessel had occasion  
9 to stop at Guam on the way to Vietnam?

10 A Yes, the vessel did make a short stop at Guam to have  
11 one man have taken off the vessel and repatriated to  
12 the United States.

13 Q These were two other men?

14 A Two other men on the vessel. I believe these were two  
15 ABs, or one OS and one AB I think. They were from  
16 New York.

17 Q All right. Did the men go ashore to the doctor or did  
18 the doctors come out to the vessel?

19 A No -- the medical team came out from shoreside in a  
20 launch, and the vessel actually did not stop. They  
21 came aboard and reported to the Master and myself, and  
22 all the necessary papers were delivered to the medical  
23 and they left the vessel and got in the launch and  
24 went ashore.

25 Q What if anything did Mr. Wakim do or say with respect

1 to the presence of the doctors aboard the vessel?

2 A Well at the time he saw these men being taken off he

3 wanted to see a doctor, or get medical --

4 Q To whom was this request made?

5 A He came to ask me, because he saw me giving the papers

6 to the medics.

7 Q And what did you do then?

8 A I just told him at that time that it was not possible,

9 because these men actually had left the vessel when he

10 came to me, because they went down a gangway that was

11 rigged up, and taken off. So it just wasn't possible;

12 the medics had actually departed.

13 Q They had left by the time he came?

14 A Right.

15 Q I see. Did Mr. Wakim indicate to you why he made this

16 request?

17 A No, no, just that he wanted to see a doctor.

18 Q Did he specify it further?

19 A He didn't specify any real reason.

20 Q Now between Guam and Cam Ranh Bay did you have any

21 contact with Mr. Wakim about any physical or medical --

22 A Not that I can remember, nothing specific.

23 Q All right. What if anything happened at Cam Ranh Bay

24 with Mr. Wakim, within your knowledge, with respect

25 to physical or medical problems?



- 1 A Well, on arrival at Cam Ranh, as I remember, he was  
2 given a Master's Certificate, which is the custom on  
3 a vessel, and sent to an Army dispensary or medical  
4 unit that's set up to receive Merchant Seamen.
- 5 Q At the time he was given that medical certificate did  
6 he indicate to you the reason for the request?
- 7 A No, just to see a doctor.
- 8 Q Did he or did he not return to the vessel after that  
9 trip ashore?
- 10 A He did return.
- 11 Q And what happened with respect to his continuing to  
12 work and be a member of his crew?
- 13 A He continued to fulfill his duties.
- 14 Q After the vessel left Cam Ranh Bay what was the next  
15 stop?
- 16 As I recollect it would be Okinawa.
- 17 During that leg of the voyage, that is following the  
18 leaving from Cam Ranh Bay and arrival in Okinawa,  
19 would you state whether or not Mr. Wakim reported to  
20 you any injury which had occurred to him aboard the  
21 vessel.
- 22 A My recollection is there was nothing specific. Now  
23 he may have, but I just don't have any recollection of  
24 it.
- 25 Q To whom in the ordinary routine of shipboard business

1 would such a report be made by an injured party?

2 A Well it would go through, usually through the bosun --  
3 if it was a member of the crew, through the bosun --  
4 and then to me.

5 Q I'll ask you then do you have any recollection of the  
6 bosun reporting any such incident concerning Mr. Wakim?

7 A I don't have any recollection.

8 Q What were your duties with respect to such information,  
9 that is with respect to information of an accident or  
10 injury when it would come to you?

11 A Well, the normal procedure is to make an entry on the  
12 medical log as to treatment and so on, and then to  
13 file an accident report if an accident occurred.

14 Q Do you have any recollection of filing such a report  
15 with respect to a story or relation by Mr. Wakim that  
16 he had sustained a fall on the deck in the vicinity  
17 of the number 2 or 3 hatch?

18 A I have no recollection. It could have happened, it  
19 could have happened, but --

20 Q Now what developed then with Mr. Wakim when the vessel  
21 arrived at Okinawa? Did he remain aboard or leave the  
22 vessel?

23 A Well, as I remember he again asked for a Master's  
24 Certificate and was issued one and sent to the clinic  
25 in Okinawa that was designed to receive Merchant



1 Seamen for treatment and diagnosis.

2 Q Did he, to your recollection did he give you any  
3 reason for his request for medical certificate at the  
4 port?

5 A Not specifically, just that he wanted to see a doctor.

6 Q Did he eventually leave the vessel at that port?

7 A As I remember, he did leave the vessel at Okinawa.

8 Q Did you have any further discussion with him after he  
9 had seen the doctor and before he packed his gear and  
10 left?

11 A I don't remember anything specifically. It could be.  
12 Papers were prepared and issued to the agent and the  
13 agent took him off the vessel.

14 Q Do you presently have in your mind and in your recol-  
15 lection at all the reason why he did get off?

16 A Well just that he was not fit for duty.

17 Q That's from shore, you mean?

18 A On the basis of his examination by the clinic, the  
19 doctor at the clinic.

20 Q All right. And do you have any idea why he was not  
21 fit?

22 A I don't remember, I don't remember.

23 MR. HOLLAND: Okay. We have no further questions.  
24  
25

## CROSS-EXAMINATION

BY MR. LEVINSON:

Q You came up from California for this, didn't you, Mr. Tidwell? -- for this deposition?

A Yes, I did. I flew up this morning.

Q Now you commented about Wakim's inability to speak the English language. He had some obvious difficulties in communicating or making himself understood?

A Well it was just -- I think that most of his problem was dealing with people and who he was speaking to. Now, you see, he seemed to put more trust in the bosun, and as a result the bosun most of the time was his sort of intermediary.

Q I see. As far as you know, or as far as your duties at least have permitted you to know, was he an ordinarily good seaman, seemed to do his duties, seemed to be able to do his duties?

A Seemed to be, willing.

Q And at the time, as a matter of fact when you suggested to him in Panama that he get off the ship, or discussed the possibility of getting off the ship, he indicated that he wanted to remain on the ship?

A Sure, sure.

Q And although you have no specific recollection of him reporting an accident, do you say that there might have



1        been some conversation between or through the bosun  
2        concerning an injury that he had sustained?

3        A        It could be, there could be.

4        Q        You couldn't say that it didn't occur?

5        A        I couldn't say that it didn't occur, no. The only  
6        thing, on this particular voyage we lost about seven-  
7        teen of the crew during the voyage, and it's awfully  
8        hard to remember each individual case.

9        Q        I see. Now did you also write up the medical log?

10       A        I would write the medical log.

11       Q        Well normally that's kept on a ship, isn't it? It's  
12       part of the ship's records?

13       A        It's made up actually in duplicate, one copy is sent  
14       to the company, the original, and the duplicate remains  
15       aboard the vessel. That was my practice.

16       Q        And that was the practice that you followed, of course,  
17       on that?

18       A        Right, yes.

19                MR. LEVINSON: I have nothing further, Bob.

20                MR. HOLLAND: Just off the record a minute.

21                        (Discussion off the record.)

22                MR. HOLLAND: Would you mark this as an exhibit,  
23       please.

24                                (Exhibit No. 1, Report, marked  
25                                for identification.)

## REDIRECT EXAMINATION

1  
2 BY MR. HOLLAND:

3 Q Handing you, Mr. Tidwell, what has been marked  
4 Defendant's Exhibit 1 for your deposition, which  
5 appears to be a Xerox copy of a document. Would you  
6 state what that is and whether or not you recognize it?

7 A It appears to be a statement made by the injured party.

8 Q And who prepared that document?

9 A I typed it.

10 Q And will you tell us whether or not Mr. Wakim's  
11 signature appears on it?

12 A Mr. Wakim's signature is on it, as I understand.

13 Q Were you present when he signed it?

14 A Yes.

15 Q Would you tell us in what way the content of the docu-  
16 ment was made clear to him before he signed it?

17 A Right. It should be noted that this was prepared and  
18 that the bosun was -- it's obliterated here -- but he  
19 was present at the time the statement was made and  
20 that Wakim signed it (indicating).

21 MR. LEVINSON: The bosun to help him translate  
22 it, in other words?

23 THE WITNESS: Right. He came with the bosun.  
24 Any time I would talk to Mr. Wakim I would have the  
25 bosun there, because he seemed to have a trust.



1 Because the bosun represented the boss.

2 By Mr. Holland:

3 Q At least from what you could tell, Mr. Tidwell, did  
4 Mr. Wakim sufficiently -- was he sufficiently aware of  
5 what was in it before he signed it?

6 A Yes.

7 Q As far as what you could tell in the conversation?

8 A Right. It represented as closely as we could under-  
9 stand what he was trying to tell us.

10 All right. Referring to the indistinguishable typing  
11 under the words "Statement typed by H.A. Tidwell,  
12 Purser," could you tell us underneath that, it said  
13 what on the original?

14 A Right. It said the bosun was in attendance at the time  
15 the statement was taken.

16 Q I see.

17 A It's too bad it didn't show through. But it's on the  
18 original.

19 MR. HOLLAND: All right. We have no further  
20 questions.

21 MR. LEVINSON: I have no further questions.

22 (Witness excused.)

23 (Signature waived.)

24 MR. HOLLAND: Now on the record still -- Mr.  
25 Levinson, one of the witnesses who was listed on the

1 notice, Mr. Gatter, Charles Gatter, was previously  
2 scheduled to arrive in Seattle on his present vessel  
3 yesterday evening. But I am advised today by his wife  
4 that his vessel will arrive this evening, December 4,  
5 and that with the short turnaround of this vessel,  
6 which is an oil-carrying rig from Seattle to Anchorage,  
7 he is in town only briefly -- she makes quick turn-  
8 arounds.

9 And I am requesting that we adjourn this depo-  
10 sition briefly for the purpose of determining his  
11 schedule and see when we can all mutually agree to a  
12 subsequent time for the taking of the deposition.

13 MR. LEVINSON: You will notify Mr. Matthews'  
14 office too, of course.

15 MR. HOLLAND: Yes, I will do that.

16 MR. LEVINSON: All right.

17 ( C O N C L U D E D )

18 - - -

19  
20  
21 C E R T I F I C A T E

22 STATE OF WASHINGTON }  
23 COUNTY OF KING } ss.

24 I, Ada Rowan, Court Reporter and Notary Public in  
25

Ada Rowan, Court Reporter



1 and for the State of Washington, residing at Seattle in said  
2 County and State, do hereby certify:

3 That the annexed and foregoing deposition upon  
4 oral examination of the witness, Homer A. ~~WILSON~~, Jr.,  
5 appearing at the instance of defendant, was taken before me  
6 and reduced to typewriting under my direction, said deposition  
7 being taken at Seattle, King County, Washington, on December  
8 4, 1973, being completed on said day;

9 I further certify that said witness and the  
10 parties hereto waived the reading and signing by said witness  
11 of his deposition after the same was fully transcribed;

12 I further certify that all objections made at the  
13 time of said examination, to my qualifications or to the  
14 manner of taking said deposition or to the conduct of any  
15 party, have been noted by me upon said deposition;

16 I further certify that I am not a relative or  
17 employee or attorney or counsel of any of the parties to said  
18 action, or a relative or employee of any such attorney or  
19 counsel, and that I am not financially interested in the said  
20 action or the outcome thereof;

21 I further certify that a document was marked as  
22 Exhibit 1 and the same is attached to the original of this  
23 deposition, to be filed with the Clerk of the above-entitled  
24 Court;

25 I further certify that the above-named witness,

1 before examination, was by me duly sworn to testify the  
2 truth, the whole truth and nothing but the truth;

3 I further certify that said deposition, as above  
4 transcribed, is a full, true and correct transcript of the  
5 testimony of said witness, including all questions and answers,  
6 and all objections, motions and exceptions of counsel made and  
7 taken at the time of the foregoing examination;

8 IN WITNESS WHEREOF, I have hereunto set my hand  
9 and affixed my official seal this 25th day of December, 1973.

10  
11 *Ada Rowan*

12 Notary Public in and for the State  
13 of Washington, residing at Seattle  
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1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 HANNA B. WAKIM,

5 Plaintiff,

6 vs.

70 CIV. 2848

7 UNITED STATES OF AMERICA,

8 Defendant  
9

10 DEPOSITION UPON ORAL EXAMINATION OF  
11 BURTRUM L. VULLIET  
12

13 BE IT REMEMBERED, that on Tuesday, December 4,  
14 1973, beginning at the hour of 3:00 o'clock p.m. thereof, at  
15 1505 Norton Building, Seattle, King County, Washington, before  
16 me, Ada Rowan, Court Reporter and Notary Public in and for  
17 the State of Washington, personally appeared Burtrum L.  
18 Vulliet, the witness herein;

19 SAM L. LEVINSON, ESQ. (Levinson, Friedman, Vhugen,  
20 Duggan & Bland) appearing for and on behalf of the plaintiff;

21 ROBERT V. HOLLAND, ESQ. (Bogle, Gates, Dobrin,  
22 Wakefield & Long) appearing for and on behalf of the  
23 defendant.

24 WHEREUPON, the following proceedings were had  
25 and testimony taken, to-wit:

1 MR. HOLLAND: Three depositions are being taken  
2 today in the above-entitled matter. Notice of the  
3 taking of two of the witnesses who will be presented  
4 today is by way of notice served and filed in New York,  
5 referring particularly to the witnesses Vulliet and  
6 Tidwell.

7 And I will present to the Reporter the notice to  
8 be attached to the original of the deposition.

9 MR. LEVINSON: May we have the usual stipulation  
10 that all reservations except as to the form of the  
11 question and the responsiveness of the answer are to  
12 be reserved. Those two should be noted at this time.

13 MR. HOLLAND: I think that's pursuant to rule.

14 MR. LEVINSON: Yes.

15 - - -

16  
17 BURTRUM L. VULLIET,

called as a witness herein, being  
first duly sworn, was examined  
and testified as follows:

18  
19  
20 DIRECT EXAMINATION

21 BY MR. HOLLAND:

22 Q Would you state your name, please.

23 A Burtrum L. Vulliet (spelling).

24 Q What is your home address?

25 A 2318 North 44th Street, Seattle, Washington.



- 1 Q What is your present occupation?
- 2 A Deck Officer Merchant Marine.
- 3 Q What is your age?
- 4 A Forty-seven.
- 5 Q And what licenses, or what's the highest license you
- 6 own?
- 7 A Master of Ocean.
- 8 Q Have you sailed on that license?
- 9 A Negative.
- 10 Q And have you sailed as a chief mate?
- 11 A Yes, sir.
- 12 Q Has shipping been your principal occupation through
- 13 your lifetime?
- 14 A Yes, since age seventeen.
- 15 Q And you started sailing then about what year?
- 16 A 1943.
- 17 Q And has that been principally, or solely in the deck
- 18 department?
- 19 A Yes, sir.
- 20 Q About what year was it that you first received any
- 21 officer's license?
- 22 A 1961.
- 23 Q Did you start sailing then as an officer?
- 24 A Yes, sir -- beg your pardon -- correction -- it was
- 25 1961 I received the license and 1961 I got my first

1 job -- 1960 I received my license and 1961 was my first  
2 job on it.

3 Q All right. And from '61 to the present time have you  
4 sailed with a lot of different companies or the same  
5 company, or what?

6 A Oh I've sailed with a number of companies, but primarily  
7 Keystone Tankers, States Line and Alaska Steam

8 Q During what portion of that period, '61 up to the  
9 present, have you sailed as a chief mate?

10 A Approximately three years.

11 Q Would that be the recent three years?

12 A Yes, most recent three years.

13 Q And are you presently attached to any vessel?

14 A No.

15 Q What's your present situation? Are you waiting to go  
16 out?

17 A Yes, I'm registered on the open board in the union  
18 hall. My last vessel was sold foreign flag -- I was  
19 chief mate on that one.

20 Q How recently -- when did you get off her?

21 A May the 5th of this year.

22 Q And for what company was that?

23 A Well it was a one-ship company called Plaza Shipping  
24 Company based in New York.

25 Q Did you ever sail aboard the Sioux Falls Victory, Mr.



- 1 Vulliet?
- 2 A Yes, sir.
- 3 Q And what was your capacity on that ship?
- 4 A I was chief officer.
- 5 Q Did you sail on one or more voyages?
- 6 A Two voyages.
- 7 Q Where did you first join the vessel?
- 8 A San Francisco, California.
- 9 Q Did a particular voyage begin at that port then?
- 10 A Yes -- well in San Francisco, yes -- we loaded in Port  
11 Chicago.
- 12 Q And where did the second voyage begin on which you  
13 served as chief mate?
- 14 A Jacksonville, Florida.
- 15 Q Now there has been testimony in this case about a trip  
16 the vessel took to Guam, Okinawa -- pardon me -- Guam,  
17 Vietnam and then Okinawa. Would that be the first or  
18 the second of your two trips?
- 19 A That would be the second voyage.
- 20 Q All right. At the time you sailed aboard her on the  
21 second voyage beginning at Jacksonville, would you  
22 state whether or not you recall a member of the crew  
23 named Hanna Wakim.
- 24 A Yes, I recall him.
- 25 Q What do you recall as to his ability to speak the

1 English language, if you remember?

2 A Well he didn't have a very large command of the  
3 language, but he spoke enough for ~~shipboard~~, common  
4 shipboard, you know, taking and receiving orders and --

5 Q What department was he in?

6 A He was ordinary seaman in the deck department.

7 Q Would you state whether or not you were advised, or  
8 were aware, at any time when the vessel was in the  
9 Canal Zone, about an incident that occurred to Mr.  
10 Wakim?

11 A Yes. I understand that he had been physically  
12 assaulted and robbed while ashore, that as a result he  
13 had lost his seaman's papers along with his money, but  
14 that the police had recovered them before we left  
15 Panama. And he had to go ashore again I believe once  
16 to make an identity and a deposition so that he would  
17 not have to be held there to appear in court.

18 Q Now was this information that you've given us, was  
19 this all something told to you, or were you involved  
20 in any way with the transactions?

21 A No, I wasn't involved in any way except to ask him  
22 what happened to him.

23 Q Was he able to tell you?

24 A Yes. There was, you know, like I say "Did you run  
25 into a door or something" jokingly. And he said no,



1 he was robbed ashore.

2 Q What did you observe about his physical appearance as  
3 a result of that?

4 A Oh, I just can't remember what the bruises were, but  
5 he was, you know, obviously he had bruises.

6 MR. LEVINSON: Facial bruises?

7 THE WITNESS: Yes.

8 A I just can't remember the location now, but it was  
9 enough for me to make a comment like "Did you run into  
10 a door," you know.

11 By Mr. Holland:

12 Q All right. Then did he continue on with the vessel  
13 from the Panama Canal Zone?

14 A Yes, sir.

15 Q And where did he get off the vessel?

16 A It was in Okinawa. I believe our first call that trip  
17 was Okinawa.

18 Q After you left the Canal Zone, what was your next stop  
19 after that?

20 A Well there was an unscheduled stop at Guam.

21 Q What was that --

22 A The purpose was to put two crew members off who were  
23 complaining -- one was complaining about having hurt  
24 his back and another -- or I mean I think they both  
25 complained about having hurt their back. It was not a

1 regular scheduled call. Our next port of call was  
2 Cam Ranh Bay.

3 Q In Vietnam?

4 A In Vietnam.

5 Q Now what if anything did you observe about Mr. Wakim's  
6 physical condition and ability to work during that leg  
7 of the voyage until you arrived in Vietnam?

8 A Well I guess my observation could be expressed nega-  
9 tively. I didn't see anything wrong. The man per-  
10 formed his duties and turned to when he was called on  
11 for overtime.

12 Q Did you have any reason to have any further discussion  
13 with him during that leg of the voyage about the  
14 incident in the Canal Zone?

15 A None that I can recall.

16 Q All right. Did anything come to your attention about  
17 any complaint made by him we'll say to you, or in  
18 your presence, about his physical condition?

19 A I can never recall him having made a complaint to me.

20 Q All right. Approximately how long were you in Cam Ranh  
21 Bay, Vietnam?

22 A Oh, let me see -- memory fails me at this point. It  
23 was several days. I remember having -- we discharged --  
24 yes, we discharged the complete cargo of ammunition  
25 and back-loaded a portion of Army retrograde cargo, as



1 they called it, for Okinawa and for Inchon. I can't  
2 recall the time -- several days it was, whatever it  
3 took to discharge the -- that was five years ago, now  
4 it's --

5 Q All right. Where did the vessel go from Cam Ranh Bay?

6 A To Okinawa.

7 Q Where did Mr. Wakim leave the vessel?

8 A In Okinawa.

9 Q And do you know why he left the vessel, of your own  
10 knowledge?

11 A Well, my understanding was after a visit to a doctor  
12 ashore in Okinawa he was pronounced unfit for duty or  
13 the doctor recommended that he be sent home.

14 Q To whom would Mr. Wakim as a member of the deck depart-  
15 ment report any shipboard injuries -- or shipboard or  
16 off shipboard injuries?

17 A He should report it to me.

18 Q Do you recall whether or not any such report was made  
19 to you?

20 A Well, no. Let me see -- he might have reported it  
21 either to the bosun or the purser first. But subse-  
22 quent to that he should have come to me for the  
23 purpose of making out a written report.

24 Q Did any report come to you either from Mr. Wakim or  
25 the bosun concerning any accident that occurred to Mr.



1 Wakim while the vessel was in Cam Ranh Bay?

2 A I cannot recall any having been made.

3 Q Were you involved -- by that I mean did you have  
4 occasion to talk to him either before or after he went  
5 ashore in Okinawa and had been seen by a doctor?

6 A No, no -- I was informed in the morning, early in the  
7 morning, the start of one day, that Wakim was being  
8 sent home. I can't even remember who it was that told  
9 me now.

10 Q What was Mr. Wakim provided by way of documents to  
11 take ashore at Okinawa to see a doctor?

12 A Well it would be a regular master's slip.

13 Q In the course of the cargo work that was going on in  
14 Cam Ranh Bay, did your job require you to be in and  
15 about the deck of the vessel?

16 A You might say almost constantly.

17 Q Would this, at least from time to time, require your  
18 walking in the vicinity of the port side of the  
19 vessel between the number 2 and -- abreast the number  
20 2 and 3 hatches?

21 A Yes, I would certainly say so.

22 Q Would you tell us whether or not at any time in that  
23 port you recall having observed any spillage of oil  
24 or grease abreast the winches which are between the  
25 number 2 and 3 hatches and on the port side?

- 1 A No, no. Most ships carry sawdust or an absorbent  
2 material for the purpose of picking it up, you know.
- 3 Q Do you have any recollection at this time of havin'  
4 ordered, or yourself, probably ordered, putting sawdust  
5 in the area I've described?
- 6 A No, I have no recollection of it, no.
- 7 Q What generally was the weather during your stay in  
8 Cam Ranh Bay?
- 9 A Well, it was I believe the beginning of the northeast  
10 monsoon period, quite rainy. I know it was quite  
11 stormy when we left, very stormy in fact.
- 12 Q During the leg of the voyage between Cam Ranh and  
13 Okinawa, what is your recollection on Mr. Wakim's  
14 being able to handle his normal workload?
- 15 A Well once again I have no recollection of him not being  
16 able to, so my assumption is that he must have per-  
17 formed all his duties then.
- 18 Q Throughout the entire voyage in which the two of you  
19 were both on the ship then, would you tell us whether  
20 or not the incident at Canal Zone was the only abnormal  
21 thing, or we'll say positive thing that you recall  
22 particularly about Mr. Wakim?
- 23 A I'm not sure I understand your question.
- 24 Q Well in other words you had a recollection of something  
25 happening to him at --



1 A You mean after all these years.

2 Q Yes.

3 A Yes, that's probably the only way I would identify  
4 him, is "that little Lebanese fellow that got dumped  
5 in Panama."

6 Q Yes, I see, okay. I may have asked you this, but would  
7 you tell us whether or not he at any time ever reported  
8 a shipboard injury while in Cam Ranh Bay?

9 A No, sir.

10 Q To you that is.

11 A No.

12 MR. HOLLAND: We have no further questions.

13

14

CROSS-EXAMINATION

15 BY MR. LEVINSON:

16 Q Mr. Vulliet, do you remember whether or not he ever  
17 made any complaints about his physical condition or  
18 got a master's certificate at Cam Ranh Bay?

19 A My memory has been refreshed on that point, that yes,  
20 a master's certificate was issued to him.

21 Q And then he came back fit for duty?

22 A Yes, that's -- you know, the procedure is that when  
23 a ship goes ashore it must be accompanied either with  
24 a -- with a statement of condition, whether he is fit  
25 for duty.



1 Q Do you remember whether or not he was off duty or  
 2 unable to complete all of his work three or four days  
 3 before they got to Okinawa? Do you have any recollec-  
 4 tion of that?

5 A No. My recollection is that he stood all his watches.

6 Q Yes -- good worker as far as you could see?

7 A Yes, I mean he seemed to be one of those that I con-  
 8 sidered to be reliable or dependable type of man; there  
 9 was very few of them on that voyage, I might add.

10 Q Now what is your watch as a chief mate?

11 A I don't stand a watch; I'm a day worker.

12 Q A day worker. Then unless there's some reason you're  
 13 seldom wandering around the ship at night then?

14 A Yes, you might say that, yes -- it would be --

15 Q All right.

16 A Unless there was something specifically brought to my  
 17 attention, you know, a piece of gear adrift or some-  
 18 thing like that.

19 Q You mentioned your crew. Was that the trip where the  
 20 bosun was also hurt on that ship, do you remember? --  
 21 sent to a doctor in Okinawa for a back injury?

22 A Yes, yes, yes -- he did slide, I think it was, during  
 23 the rough weather or something, and banged his tailbone  
 24 I believe he said is what it was. But he didn't  
 25 consider it serious enough to take any time off, as I

1 recall.

2 Q You say you were able to communicate with him, but  
3 obviously he was a national that had some difficulty  
4 with the English language. I mean he wasn't trained  
5 to think in English as you and I do?

6 A Yes, I would venture that would be my guess, that he  
7 thought first in his native language.

8 Q And then had it translated into English?

9 A Yes, I would assume that would be the case.

10 Q Do you know what watch he was on?

11 A I believe it was the midnight-to-four watch.

12 Q And as an ordinary would his job be to stand lookout?

13 A Middle two hours, yes.

14 Q And that would be up on the forepeak and then --

15 A In favorable weather.

16 Q Yes. And then if the weather turns bad he's brought  
17 back and --

18 A Moved to the bridge.

19 Q -- moved to the bridge.

20 A Um-hmm.

21 MR. LEVINSON: I have no further questions.

22 MR. HOLLAND: We have no further questions.

23 Mr. Vulliet, when this has been typed up by the Reporter  
24 you have a right to read it over and sign it, but if  
25 counsel and I agree and trust the Reporter to put it



1 down accurately you can likewise waive the signing if  
 2 that's agreeable.

3 THE WITNESS: Okay.

4 (Witness excused.)

5 (Signature waived.)

6 ( C O N C L U D E D )

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 10 C E R T I F I C A T E

11 STATE OF WASHINGTON }  
 12 COUNTY OF KING } ss.

13  
 14 I, Ada Rowan, Court Reporter and Notary Public  
 15 in and for the State of Washington, residing at Seattle in  
 16 said County and State, do hereby certify:

17 That the annexed and foregoing deposition upon  
 18 oral examination of the witness, Burtrum L. Vulliet, appear-  
 19 ing at the instance of defendant, was taken before me and  
 20 reduced to typewriting under my direction, said deposition  
 21 being taken at Seattle, King County, Washington, on December  
 22 4, 1973, being completed on said day;

23 I further certify that said witness and the  
 24 parties hereto waived the reading and signing by said witness  
 25 of his deposition after the same was fully transcribed;

Ada Rowan, Court Reporter



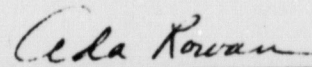
1 I further certify that all objections made at the  
2 time of said examination, to my qualifications or to the  
3 manner of taking said deposition or to the conduct of any  
4 party, have been noted by me upon said deposition;

5 I further certify that I am not a relative or  
6 employee or attorney or counsel of any of the parties to said  
7 action, or a relative or employee of any such attorney or  
8 counsel, and that I am not financially interested in the said  
9 action or the outcome thereof;

10 I further certify that the above-named witness,  
11 before examination, was by me duly sworn to testify the truth,  
12 the whole truth and nothing but the truth;

13 I further certify that said deposition, as above  
14 transcribed, is a full, true and correct transcript of the  
15 testimony of said witness, including all questions and  
16 answers, and all objections, motions and exceptions of counsel  
17 made and taken at the time of the foregoing examination;

18 IN WITNESS WHEREOF, I have hereunto set my hand  
19 and affixed my official seal this 24th day of December, 1973.

20  
21  
22   
23 Notary Public in and for the State  
24 of Washington, residing at Seattle  
25

Ada Rowan, Court Reporter

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
HANNA B. WAKIM, :  
Plaintiff, :  
-against- : 70 Civil 2848  
UNITED STATES OF AMERICA :  
Defendant. :

-----X

Deposition of the defendant

UNITED STATES OF AMERICA by WILTON B.  
JACKSON taken by the defendant pursuant  
to notice at the offices of Zock, Petrie,  
Reid, Curtin & Byrnes, Esqs., 19 Rector  
Street, New York, N.Y. 10004, on March 5,  
1974, at 12:00 noon, before Emanuel Morris  
a Certified Shorthand Reporter and Notary  
Public of the State of New York.

*Commerce Reporting Company, Inc.*  
*Forty One East Forty Second Street*  
*New York, New York 10017*

CERTIFIED SHORTHAND REPORTERS (212) MU 2-7790 A COMPLETE REPORTING SERVICE SINCE 1935



## 1 APPEARANCES:

2 PAUL C. MATTHEWS, ESQ.,  
3 Attorney for plaintiff  
4 11 Broadway  
5 New York, N.Y. 10004

6 ZOCK PETRIE, REID, CURTIN & BYRNES, ESQs.,  
7 Attorneys for defendant  
8 19 Rector Street  
9 New York, N.Y. 10004

10 BY: EDWIN REID, ESQ.,  
11 Of Counsel

12 oOo

13 MR. REID: The usual stipulations?

14 MR. MATTHEWS: Yes, all objections except  
15 as to the form of the question are reserved until  
16 the time of the action.

17 MR. REID: Yes, and this examination is  
18 being taken subject to the stipulation of the parties.

19 oOo

20 IT IS HEREBY STIPULATED AND AGREED, by and  
21 between the attorneys for the respective parties here-  
22 in, that the sealing and filing of the within deposi-  
23 tion be waived; that such deposition may be signed  
24 and sworn to before any officer authorized to adminis-  
25 ter an oath, with the same force and effect as if



1  
2 signed and sworn to before the officer before whom  
3 said deposition is taken.

4 IT IS FURTHER STIPULATED AND AGREED that  
5 objections, except as to form, are reserved to the  
6 time of trial.

7  
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9  
10 W I L T O N B. J A C K S O N, called as a witness, and  
11 having been duly sworn by a Notary Public of  
12 the State of New York (EMANUEL MORRIS) was examined  
13 and testified as follows:

14 EXAMINATION BY MR. REID:

15 Q Mr. Jackson what is your occupation?

16 A Marine engineer.

17 Q And do you hold any United States Coast Guard  
18 license?

19 A Yes, sir. As first assistant engineer.

20 Q And how long have you held an first assistant  
21 engineer's license?

22 A Approximately 20 years.

23 Q And how long have you been going to sea?

24 A Approximately 30 years.

25 Q And how much of your time have you spent in the

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engine room?

A The entire period.

Q And when did you get your first license?

A In 1953 as near as I can remember now.

Q And that was as a third assistant?

A No, that was as a first assistant license.

The third assistant license, I got in 1945, in January I believe.

Q During your years at sea in what capacity did you serve mostly as?

A In the entire time mostly as first assistant engineer.

Q Are you presently employed?

A Yes sir.

Q On what ship?

A The SS ARIZPA.

Q And who owns and operates that ship?

A Sea Land.

Q And did you at my request come to our office today to give your testimony here?

A Yes sir.

Q When does your ship sail?

A This afternoon.

Q And when do you expect it to be next at the



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Port of New York?

A I anticipate possibly Saturday morning.

Q And then after that?

A That would be possibly the following Wednesday.

Q And are you going to stay on the ship or not?

A No sir, I go on vacation on return from Boston.

Q And that is probably next Wednesday?

A Saturday.

Q Next Saturday?

A Yes.

Q And what are you going to do then?

A Go home.

Q And how long are you going to be on vacation?

A About four months.

Q And after your vacation do you have any plans  
or expectation to be at the Port of New York?

A Yes sir, I will return to the ship wherever it  
happens to be at the time; it might or might not be on  
the same run.

Q At one time were you employed on the SS SIOUX  
FALLS VICTORY?

A Yes, sir.

Q And during what period of time were you employed  
on her?

1  
2 A This was from September until about March, it  
3 was about seven months; September 1969 until about March  
4 1970.

5 Q And in what capacity were you employed?

6 A As first assistant engineer.

7 Q Could you tell us whether or not you stood a  
8 watch or whether or not you were the day man?

9 A Day man, maintenance.

10 Q And what is and what were your duties as a day  
11 man maintenance?

12 A Generally to do the main maintenance work on the  
13 machinery of the ship.

14 Q And does that constitute deck machinery, where  
15 there was engine room machinery?

16 A Yes, as far as the mechanical equipment was con-  
17 cerned.

18 Q And would that include the vessel's winches?

19 A Yes sir.

20 Q (continuing) And the winches between number two  
21 and three hatches?

22 A Yes, sir.

23 Q In the ordinary course of the ships business if  
24 anything was mechanically wrong with the winches would  
25 that normally come to your attention as the maintenance



1

2

man?

3

A Yes, sir.

4

Q During your term of employment on the VICTORY did there ever come a time that it was brought to your attention that there was any mechanical problems at all with the winches between number two and three hatches?

5

A No, sir.

6

Q Was any mechanical work ever done during your period of employment on that vessel on the winches between number two and three hatches?

7

8

A Not mechanical; no sir.

9

Q And what were the general condition of the winches aboard the ship?

10

11

A Very excellent condition.

12

13

14

Q And did that include the winches between number two and three hatches?

15

16

A Yes, sir.

17

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21

22

Q Did it ever come to your attention during the course of your employment as to whether or not there were any oil spills in and about the winches at between number two and three hatches?

23

24

25

A No, sir.

Q Mr. Jackson, did a lawyer come and speak with you on about January 28, 1970?

1  
2 A Yes, sir.

3 Q (continuing) Concerning any problems that you  
4 may have had, mechanical problems that you may have had  
5 with the winches between numbers two and three hatches  
6 concerning the oil or spills between that place?

7 A Yes, sir.

8 Q And did you make a statement?

9 A Yes, sir.

10 MR. MATTHEWS: I am going to object to the  
11 last three questions on the grounds that they are  
12 leading.

13 Q Well, what was the conversation that you had  
14 with the attorney, Mr. Jackson?

15 A It was concerning a reported claim of injury  
16 from one of the former crew members, to the effect that  
17 there was oil on deck at one time, causing him to slip  
18 and hurt himself.

19 Q Did you make a statement?

20 A I did.

21 Q And could you identify this paper (handing same  
22 to witness)?

23 A Yes, sir, that's my statement.

24 Q Is that your signature (indicating)?

25 A Yes, sir.



1  
2 MR. REID: (addressing reporter) You can  
3 mark th as Defendant's Exhibit A for identification,  
4 Jackson's deposition 3574.

5 (Whereupon paper described above  
6 was marked as Defendant's Exhibit A  
7 -idf. Jackson's deposition 3574, for  
8 identification as of this date.)

9 Q Mr. Jackson, do you recall a member of the deck  
10 crew, for at least a part of the voyage at which he was  
11 employed, by the name of Hanna B. Wakim, who has described  
12 himself as being a Lebanese?

13 A I don't recall the exact person.

14 MR. REID: Counsel, you may examine.

15 (Handing papers to Mr. Matthews.)

16 MR. MATTHEWS: Are these the ship's log?

17 MR. REID: Yes.

18 MR. MATTHEWS: You will have to bear with me  
19 for a moment sir.

20 MR. REID: I have the engine log here but  
21 unfortunately it only begins on December the 25th.

22 MR. MATTHEWS: I will have an opportunity  
23 to look at these logs later on without specific  
24 reference to the deposition?

25 MR. REID: Yes, anytime at all.

MR. MATTHEWS: Well, let me ask Mr. Jackson  
a couple of questions about this log book.

1  
2 MR. REID: Let's identify what you are  
3 talking about.

4 MR. MATTHEWS: Yes.

5 EXAMINATION BY MR. MATTHEWS:

6 Q Mr. Jackson, Mr. Reid has handed to me a log  
7 book that says on the outside Turbin Engines, Alaska  
8 Steamship Company, engineer's log book; and this particular  
9 one that he has handed me and which he states is the only  
10 one available covers the period from Christmas day of  
11 1969 to January 22, 1970.

12 A (no response from the witness.)

13 Q Now, in thumbing through this log book rather  
14 quickly it seems to me that all of the entries appear to  
15 be made by either the watch engineer or the chief engineer.

16 A (no response)

17 Q I don't see your signature in here (indicating).

18 A No sir; normally I wouldn't sign anything in  
19 there as the day man.

20 Q So would I understand that whatever records you  
21 might keep of work that you might do, would not appear  
22 in this engineer's log book?

23 A Well it would, if there were certain routine,  
24 like a change of oil every month or something like that.  
25 I wouldn't necessarily sign it but I would have it put in



1  
2 the log book for future reference.

3 Q This would have to do with main engines or the  
4 auxiliaries you are talking about?

5 A Yes or anything mechanically, routine, timely  
6 things there that we keep for future reference.

7 Q Now when you say that the winches on the SIOUX  
8 FALLS VICTORY during the time that you were on her were  
9 in very excellent condition are you suggesting that they  
10 didn't break down at all?

11 A No sir, they did have normal problems which  
12 most mechanical equipment does have, however for the  
13 apparent age of the ship, the entire ship was in unusually  
14 good condition.

15 Q Do you have any recollection of whether these  
16 winches did break down while cargo was being worked?

17 A Yes, sir; I don't recall any exact dates but  
18 there were occasions when there were electrical failures  
19 of one kind or another, mostly minor.

20 Q Well, the only time a winch would normally break  
21 down would be when she's working, is that right?

22 A That's true, yes.

23 Q So that your maintenance work that you are  
24 talking about would take place when the ship is in port,  
25 is that right?

1  
2 A Not necessarily.

3 We try to keep the cargo moving as much as  
4 possible, when they are actually working the cargo. Even  
5 if it includes leaving some repair undone, so long as  
6 it leaves cargo working; but some work is done at sea or  
7 in port between cargo operations.

8 Q On the SIOUX FALLS VICTORY did you keep a work  
9 book?

10 A I don't believe I did, no sir.

11 Q When the winches broke down, while working cargo,  
12 did you repair them or did somebody else?

13 A The normal procedure was for the electricians  
14 to make them, which were mostly electrical repairs which  
15 the electricians made.

16 I would be notified on occasion if anything other  
17 than electrical came up.

18 Q Do you recall whether you personally made any  
19 repairs to any of the winches while the vessel was in  
20 Cam Ranh Bay?

21 A I don't recall any, no sir.

22 Q If there is an oil spill on the deck, whose  
23 job is it to clean that up?

24 A Generally it's the person who caused the spill.

25 Q Where do you perform most of your duties when



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the ship is at sea?

A Mostly in the engine room.

Q Is it any part of your duties when the vessel  
is at sea to make rounds out on the deck?

A Not normal inspection rounds, n, six.

MR. MATTHEWS: That's all I have.

(Time noted: 12:30 )

---

Wilton B. Jackson

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1974

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C E R T I F I C A T E

STATE OF NEW YORK )  
:ss  
COUNTY OF NEW YORK )

I, EMANUEL MORRIS, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That WILTON B. JACKSON, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21<sup>st</sup> day of March, 1974.

Emanuel Morris, C.S.R.  
Emanuel Morris



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March 5, 1974

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I N D E X

WITNESS

DEFENDANT

EXAMINATION BY

PAGE

Wilton B. Jackson

BY MR. REID

3

BY MR. MATTHEWS

10

EXHIBITS

DEFENDANTS

FOR IDENT.

A

Jackson Deposition 3574

9

1 IN THE UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 HANNA B. WAKIM,

5 Plaintiff

6 vs.

7 UNITED STATES OF AMERICA,

8 Defendant.

NO. 70-Civil-2848

10  
11 DEPOSITION OF CHARLES H. GATTER  
12 (At Instance of Defendant)  
13

14 APPEARANCES:

15 SAM L. LEVINSON, of Messrs. Levinson, Friedman,  
16 Vhugen, Duggan & Bland, 1602 Seattle Tower, Seattle, Washington  
17 98101, appearing on behalf of the Plaintiff;

18 ROBERT V. HOLLAND, of Messrs. Bogle, Gates, Dobrin,  
19 Wakefield & Long, 1400 Norton Building, Seattle, Washington  
20 98104, appearing on behalf of Defendant.

21  
22 Deposition of CHARLES H. GATTER, a witness of lawful  
23 taken pursuant to oral stipulation among counsel on Friday,  
24 March 22, 1974, 11:00 o'clock a.m., 1400 Norton Building,  
25 Seattle, Washington, before F. J. Gentry, duly qualified



1 Notary Public, in and for the State of Washington, residing  
2 at Seattle.

3 It was stipulated between counsel for the parties  
4 that the deposition is being taken pursuant to the Federal  
5 Rules of Practice and Procedures.

6  
7 MR. HOLLAND: This deposition of witness  
8 Gatter is being taken pursuant to all stipulation between  
9 New York counsel for the Plaintiff and the Defendant  
10 and between their respective Seattle representatives.

11 May it be stipulated that notice of filing of the  
12 deposition and signing of the deposition by the witness  
13 be waived.

14 MR. LEVINSON: So stipulated.

15 MR. HOLLAND: And, Mr. Levinson, I have been  
16 asked by Mr. Reid, representing the Defendant in New  
17 York, that we expedite the preparation of the deposition  
18 and that the original and the Plaintiff's and the  
19 Defendant's copies be sent through me to Mr. Reid in  
20 New York, who will deliver Mr. Matthews' copy to him.

21 Is that agreeable?

22 MR. LEVINSON: Agreeable.

23  
24 CHARLES H. GATTER,

having been called on behalf  
of Defendant, was duly sworn  
and testified as follows:

## 1 DIRECT EXAMINATION

2 BY MR. HOLLAND:

3 Q Would you please state your name.

4 A Charles H. Gatter.

5 Q Where do you live?

6 A Kent, Washington.

7 Q What is your age?

8 A 57.

9 Q What is your present occupation?

10 A I am engineer on the MOBILE SEALAND SERVICE, marine  
11 engineer.

12 Q What is the highest ticket you had held -- license?

13 A Chief Engineer.

14 Q But what engineer are you on the MOBILE?

15 A I am the permanent second engineer.

16 Q Had you been sailing more or less all of your adult  
17 life?

18 A Most of it.

19 Q When did you first obtain a license of any kind?

20 A 1941.

21 Q Was that also in the engine room department?

22 A Yes.

23 Q Beginning in 1941, did you sail more or less continuously  
24 as an engineer aboard various vessels?

25 A I did take a few years when I was part time in another



1 business.

2 Q When you did this sail were you sailing on your license  
3 then?

4 A I sailed on my license all the time. I have had a chief  
5 engineer's license since 1943.

6 Q Did you ever serve aboard the SIOUX FALLS VICTORY.

7 A Yes.

8 Q At that time the vessel was being operated by the Alaska  
9 Steamship Co. for the Federal Government, was it not?

10 A Yes.

11 Q Did you make one or more voyages on her?

12 A Two voyages.

13 Q Do you recall approximately the period when you were  
14 on her?

15 A I don't remember the dates. We made two trips to Viet  
16 Nam. I joined the vessel in Jacksonville.

17 Q The date of the injury claimed by Mr. Wakim in this  
18 lawsuit, Mr. Gatter, was November 26, 1969.

19 Mr. Wakim's testimony indicates that the vessel  
20 on or about that time was in Cam Rahn Bay.

21 Do you remember that particular voyage?

22 A I remember being in Cam Rahn Bay on the ship.

23 MR. LEVINSON: There seems to be a little  
24 discrepancy in the record as to the date. The informa-  
25 tion I have is it was November 29, and that is probably

1 immaterial, but just for the record.

2 MR. HOLLAND: Yes.

3 Q (By Mr. Holland) Would that have been your first or  
4 your second voyage on her -- that visit at Cam Rahn Bay?

5 A I believe it was my first voyage.

6 Q What engineer were you on the vessel?

7 A I was the chief.

8 Q Was that true on both of those two voyages?

9 A Yes.

10 Q Do you recall a member of the deck department, an ordinary  
11 seaman, named Hanna Wakim?

12 A No, I dont.

13 Q During the time the vessel was in Cam Rahn Bay -- first,  
14 let me ask you -- about how long was it there, would you  
15 estimate?

16 A About a week.

17 MR. LEVINSON: On the first voyage? This was  
18 your first voyage?

19 MR. WITNESS: The first voyage, yes, about  
20 a week.

21 Q (By Mr. Holland) Do you recall the name of the chief  
22 electrician on the vessel at that time?

23 A Yes.

24 Q And what was his name?

25 A Mr. Truitt.



1 Q Was Mr. Truitt aboard the vessel at the Cam Rahn Bay?  
2 A Yes, he was. He left the vessel at Cam Rahn Bay.  
3 Q When did he leave the vessel with respect to the time  
4 the vessel left Cam Rahn Bay?  
5 A Well, I believe it was the last day.  
6 Q You mean he left the vessel the last day?  
7 A I believe it was the last day we were in Cam Rahn Bay.  
8 Q Why did he leave the vessel?  
9 A He became ill. He must have had some kind of a heart  
10 problem because he fainted for awhile and they sent him  
11 ashore to the hospital.  
12 Q Up to the time he was sent ashore, was he disabled in  
13 any way, or was he normally doing his job?  
14 A He seemed to be a very strong person, a big man.  
15 Q Do you have any recollection of any work being done on  
16 any of the winches during the period of time the vessel  
17 was in Cam Rahn Bay?  
18 A Yes, we worked on at least two of the winches electrically.  
19 We had several electrical problems with the winches  
20 during the trip.  
21 Q Referring particularly by me now to the winches between  
22 the No. 2 & No. 3 hatches, do you recall anybody doing  
23 any work on those winches?  
24 A Yes, Truitt and his assistant had worked on those winches  
25 for quite a period of time. One winch was broken down

1 for quite a few hours and --

2 MR. LEVINSON: Just a minute --

3 A (Continuing) -- I went to help them --

4 MR. LEVINSON: All right, that probably  
5 answers my question --

6 A (Continuing) -- towards the last.

7 MR. LEVINSON: (Continuing) -- Because we  
8 have had no evidence this man knew of it directly unless  
9 he worked on it himself.

10 Q (By Mr. Holland) Under whose direction did Mr. Truitt  
11 work?

12 A The first engineer and myself: Mostly myself on the  
13 electrical work on the winches.

14 Q You mentioned that you had occasion to work with Mr.  
15 Truitt.

16 Would you tell us what the problem, not being  
17 technical at all about it, but what the problem with  
18 the winches was.

19 A On this last one, I believe, it was more in the switches,  
20 and we changed one or two solenoid coils and some of  
21 the pilot switches that are right alongside the solenoid  
22 mechanism where we found the major trouble. We did  
23 change some resistors on some of the winches, too, but  
24 I don't recall if on that particular winch we changed  
25 the resitors or not.



- 1 Q Would you state whether or not during that period in the  
2 Cam Rahn Bay it became necessary to do any mechanical  
3 work on the winches at No. 2 & 3 hatches.
- 4 A No, there was no mechanical work.
- 5 Q What portion of the time that work was being done on  
6 those winches between 2 and 3 did you work with Mr.  
7 Truitt or his assistant?
- 8 A I'd say not more than an hour and a half. A lot of his  
9 time was spent trying to find out what was wrong with  
10 the winches, so there was not a great deal of work that  
11 went on. It was a matter of trouble-shooting the winch.
- 12 Q Can you place in time when that work was being done  
13 with respect to the day the vessel sailed?
- 14 A I think it was early in the morning, but I don't remember.  
15 I don't remember what time of the day it was. It was  
16 towards the last of his work on the winches, because  
17 when I went out there, we completed the job.
- 18 Q Within what approximate period of time did the vessel  
19 sail after that job was completed then?
- 20 A It sailed late in the day.
- 21 Q You are talking about the same day? Is that what you  
22 mean?
- 23 A It sailed late at night.
- 24 Q Was it the same day the work was finished on the winches  
25 or later?

1 A I wouldn't say for sure. I think it was that morning.  
2 It could have been the previous morning, but it was one  
3 of those two mornings. I didn't make any record of it.  
4 I just went out. I knew he was working on the winch  
5 an awful long time, and we needed to have them working --

6 Q Either the same day or the previous day --

7 A (Continuing) -- and I went to help him.

8 Q (Continuing) -- from sailing the winches were completed?

9 A That is right.

10 Q During the time you yourself worked in and about the  
11 winches, would you state whether or not you experienced  
12 any difficulty with oil or grease on the deck in the  
13 vicinity of the winches?

14 A No.

15 MR. LEVINSON: I object to the question as  
16 leading.

17 Q (By Mr. Holland) Would you state whether or not you  
18 had any reason or occasion to clean up any oil or grease  
19 in the area?

20 MR. LEVINSON: Same objection -- leading.

21 MR. HOLLAND: You can answer yes or no.

22 A No.

23 Q Would you tell us whether or not you had occasion to  
24 report to any of the other vessel's officers about any  
25 condition of oil or grease on the deck in the vicinity



1 of those winches.

2 A No.

3 MR. LEVINSON: Same objection -- leading --  
4 and move to strike all the answers on the grounds of the  
5 leading questions.

6 Q (By Mr. Holland) Could you tell us approximately the  
7 distance in feet between the winches or the winch bed  
8 and the side of the vessel either port or starboard?

9 A I'd say 20 feet.

10 Q At the time you worked on the winches would you tell us  
11 whether or not there was any deck cargo in that area,  
12 or was the deck open and clear?

13 A I could only guess at it. I really wouldn't know how  
14 clear it was.

15 Q Do you recall having any difficulty in working around  
16 the winches because of any deck cargo?

17 A I never do because I am used to a ship.

18 Q Are repairs, such as the type you described, entered  
19 in the engine room log or not?

20 A Usually not.

21 Q How about mechanical repairs to a winch of those types?

22 Would that type of work be entered in the engine  
23 room log?

24 A Major work might be entered. The anchor windlass would  
25 be entered. Some of these winch repairs are, like

1           electrical, are usually just routine.

2   Q       Would they or would they not be entered?

3   A       Usually not entered.

4           In the deck department it is necessary for them to  
5       keep track of winch-shutdown-periods because of the  
6       cargo.

7   Q       If they keep track of such shutdown-periods, would that  
8       be in the engine room log or some other log?

9   A       No, it wouldn't be in the engine room log. It would be  
10      in the deck department log.

11           MR. LEVINSON: It would be in the deck depart-  
12      ment log?

13           THE WITNESS: Yes, the shutdown-periods; no  
14      details about the breakdown.

15   Q       (By Mr. Holland) Mr. Gatter, during that voyage did  
16      you keep a personal workbook or any kind about the type  
17      of work done, such as you have described, or is that a  
18      normal thing to do?

19   A       I don't believe I did.

20           The only record I would have is a work requisition  
21      list for repairs that could be done by the Port Engineer,  
22      by the Port people in port when we got back.

23   Q       Would the type of work that you described as having  
24      helped Mr. Truitt with in Cam Rahn Bay be the type of  
25      repair that would go into a work requisition list?



- 1 A Not normally; mostly we take care of all the electrical.
- 2 Q How many winches were there in that area between number
- 3 2 and 3?
- 4 A Well, forward of the mast there would be 2, and after
- 5 the mast there would be 2 -- 2 for each hatch -- they
- 6 are close together.
- 7 Q And the number 3 hatch was where with respect to the
- 8 house?
- 9 A Just forward of the house, the first hatch.
- 10 Q Did your work at the winches between number 2 and 3
- 11 hatches involve your being on both the port and the
- 12 starboard sides of the winches and their winch beds?
- 13 A Well, in order to get there, you usually see the whole
- 14 area. There is not much you are going to miss around
- 15 the winch.
- 16 Q Was the work that you yourself performed along with Mr.
- 17 Truitt performed in daylight or nighttime hours?
- 18 A I worked with him in the daylight for awhile and I also
- 19 worked with him in the dark. I'm not sure whether it
- 20 was the same winch. We worked at another winch at number
- 21 3 hatch, on the after end of number 3, at one time,
- 22 forward of number 3.
- 23 Q Would you agree to the waiving of your signature to
- 24 this deposition after it has been typed up?
- 25 A Yes.

MR. HOLLAND: No further questions.

CROSS EXAMINATION

BY MR. LEVINSON:

Q Mr. Gatter, as Chief Engineer you had nothing to do actually with the Plaintiff, Mr. Wakim, did you?

A No, I can't even --

Q You can't even recall him?

A (Continuing) -- remember the name.

I believe there was a dark skinned man on the ship. It presents a picture to me now, but I have been reminded, but I really --

Q You have no recollection?

A I really can't remember.

Q Your function as Chief Engineer relates only to the mechanical and electrical operation of the vessel primarily, does it not?

A Yes.

Q When you went to work or had Mr. Truitt go to work, that was the result of what? Some complaint that the winches were not operating properly?

A I believe the mate called him when one of the winches was not working, and he went on his own and started the work. I found out about it, that he was working there, and then later it seemed like he was working quite a



1 long time, so then I went to help him.

2 Q Mr. Truitt left the vessel, as you say, before the  
3 vessel left Cam Rahn Bay --

4 A Yes.

5 Q (Continuing) -- before Okinawa, which, I guess, was the  
6 next stop?

7 A Yes -- well, I'm not sure whether we made another Viet  
8 Nam port. I don't remember.

9 Q But, nevertheless, he left the vessel at Cam Rahn Bay?

10 A Yes.

11 Q Do you have any recollection as to whether or not there  
12 was any cargo on deck at the time the vessel left Cam  
13 Rahn Bay on that trip, that is, on the starboard side?

14 A I don't remember.

15 Q It could have been and you have no recollection?

16 A It could have been.

17 Q When you had completed your work with the winches on the  
18 morning, which is, I think, what you testified to, did  
19 anybody check the winches, or did you check them out as  
20 to their operation?

21 A Well, Truitt and I were checking out the way they operated  
22 in order to find out what was wrong. We were actually  
23 moving the operating lever, and it wouldn't function in  
24 all positions before, and that was why we were working  
25 on it.

1           So what we did was, I found the problem and pointed  
2           it out to him, and by actuating a pilot switch -- this  
3           was a problem that was still left in the winch when I  
4           got there -- by actuating this pilot switch we could  
5           make it operate in this position, and we both decided  
6           what needed to be done to correct that. Then he did  
7           this very easily, and I left at that time while he was  
8           doing this, and then they started using the winches  
9           again shortly thereafter.

10   Q       So when you had finished your work, or Mr. Truitt finished  
11           the work, then the deck department started to use the  
12           winches?

13   A       Yes.

14   Q       And apparently they did use them at that time?

15   A       Yes, the winches were used after that.

16   Q       Your department has nothing to do, or does it, with  
17           reference to keeping the oil level in the proper level  
18           for the use of the winches? Is that your department?

19   A       Yes, the electrician keeps track of the greasing of the  
20           winches and the oil level in the gear boxes.

21   Q       In the gear boxes?

22   A       A gear box is right adjoining the electrical switch  
23           boxes.

24   Q       Now, when you were there working on the electrical part,  
25           did you check that?



- 1 A No, I didn't check that.
- 2 Q You don't know whether Mr. Truitt checked that either?
- 3 A Yes, he had checked the grease on a routine basis
- 4 during the trip, the greasing and oiling.
- 5 Q Whose job is it to clean up any oil spills in the area?
- 6 Is that the deck department's, or is that your
- 7 department?
- 8 A That would be the deck department, although since the
- 9 electrician makes his normal rounds, he would point that
- 10 out to somebody or else take care of it himself, if
- 11 there was any spillage.
- 12 Q Well, after your work was completed and you had checked
- 13 it out and you turned the winch over to the deck depart-
- 14 ment -- which I understand you did -- to operate --
- 15 A Yes.
- 16 Q (continuing) -- do you know if any check was made as
- 17 to any oil leakage and spillage?
- 18 A Well, all I know is that I didn't see any oil spillage
- 19 in that area.
- 20 Q That is in the morning of the day --
- 21 A When I worked on it.
- 22 Q (continuing) -- when you worked on it -- okay -- so
- 23 you don't know what occurred after that, if anything?
- 24 A No, I don't.
- 25 Q Any complaint as to the operation of the winch, as I

1 understand it, would come from the mate to the electrical  
2 department or to you or one of the engineers?

3 A Both, if they wanted some quick action.

4 Q This was a Victory ship, was it not?

5 A Yes.

6 Q And it was one of the old ones.

7 Do you know whether it was just taken out of moth-  
8 balls for these trips?

9 A Well, the Alaska Steam -- all of them, of course, have been  
10 in mothballs a certain period of time, and I know the  
11 Sioux Falls had been out for quite a few trips, maybe  
12 two or three years, but Alaska Steam did have their  
13 ships in better condition than most ships, I think,  
14 most of the Victories.

15 Q But there were problems with those that came out of  
16 mothballs, obviously?

17 A Sometimes they had more problems than others.

18 Q So as to any condition which existed, say, the following  
19 morning after the ship was under way in the area of that  
20 winch, you don't know anything about any deck condition  
21 there at that time?

22 A No, I don't.

23 Q But number 3 hatch and these winches were worked after  
24 you finished your checking of these switches and repairing  
25 of the switches?



1 A Yes, they were operated and had to be because there was  
2 still cargo to go ashore.

3 Q They were still working on cargo?

4 A Yes.

5 Q Now, there was an oil spill that you recalled that  
6 occurred when you were taking diesel oil aboard in  
7 Japan later on that trip, was there not?

8 A Well, that could very well have been.

9 One of the Victories -- it must have been that one --  
10 I remember we had a small slop of oil. The way I  
11 remember it it was in the passageway next to the house.  
12 It was way aft, of course, of that winch area, and it  
13 was a small spill that was taken care of right away.  
14 I don't remember anybody being hurt or anything like  
15 that.

16 Q These things do occur, and you are supposed to take  
17 care of them, or whoever knows about it is to take care  
18 of them, when they do occur?

19 A That is right.

20 Q Do you recall the weather while the vessel was in Cam  
21 Rahn Bay?

22 Pretty bad weather at that time, lots of rain, lots  
23 of wet?

24 A Well, of course, it usually rained quite a bit there.  
25 I don't remember. I went ashore two or three times.

1 I don't remember much about the rain. You get used to  
2 it. It is like Seattle.

3 MR. LEVINSON: No further questions.

4 MR. HOLLAND: That is all I have, and thank  
5 you.

6 (Depositor concluded)

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C E R T I F I C A T E

UNITED STATES OF AMERICA    )  
  )  
STATE OF WASHINGTON            )       SS.  
  )  
COUNTY OF KING                )

I CERTIFY THAT on the twenty second day of March, 1974, at the hour of 11:00 o'clock AM, at 1400 Norton Building, Seattle, Washington, before me, F.J. Gentry, a Notary Public in and for the State of Washington, County of King, personally appeared CHARLES H. GATTER, a witness called on behalf of the Defendants; SAM L. LEVENSON, Attorney, appeared as counsel for the Plaintiff, and ROBERT V. HOLLAND, Attorney, appeared as counsel for the Defendants; and the said witness having been by me first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth in said case, deposed and said as appears by his deposition hereto annexed.

I further certify that the deposition was then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction, and that I have retained the said deposition in my possession for the purpose of delivering the same to the clerk of the District Court of the United States for the Southern District of New York, the court for which the same was taken.

I further certify that I am not of counsel nor attorney for either of the parties in said deposition

1 and caption named, or in any way interested in the event of  
2 the cause named in said caption.

3 IN WITNESS WHEREOF, I have hereunto set my  
4 hand at my office this 23rd day of March, 1974.

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7 NOTARY PUBLIC in and for the State  
8 of Washington, residing at Seattle.  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
HANNA B. WAKEL

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.'  
-----

No. 70 - Civil - 2848

October 9, 1974  
New York, New York

TESTIMONY OF DR. IRVING MAUER AND DR. HOWARD BALENSWEIG  
and  
COURT'S REMARKS

BEFORE:

The Honorable Gus J. Solomon, Sr., Judge, Sitting  
by Special Assignment in the Southern District of New York

APPEARANCES:

Mr. Paul C. Matthews, Attorney for Plaintiff.

ZOCK, PETRIE, REID, CURTIN & BYRNES, of Counsel  
By: Mr. Edwin K. Reid, for Defendant.

DR. IRVING MAUER was thereupon produced as a witness in behalf of the Plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE COURT: Please be seated. State your full name and spell your last name.

A Irving Mauer, M-a-u-e-r.

THE COURT: Dr. Mauer, you testified here before me a few days ago. I listened to his qualifications. I am satisfied with his qualifications as an orthopedic surgeon.

Mr. Reid, do you want to ask him any questions about his qualifications?

MR. REID: No, Your Honor.

THE COURT: All right.

#### DIRECT EXAMINATION

BY MR. MATTHEWS:

Q I have the hospital records in four separate packets. I think one of them actually Mr. Reid has a copy. Do you have one bound copy, Mr. Reid?

MR. REID: I sent you some day before yesterday.

MR. MATTHEWS: I understand that.

THE COURT: What is the problem?

MR. MATTHEWS: It isn't a problem, Your Honor.

I have three sets.



THE COURT: Of the same ones?

MR. MATTHEWS: They are all different, Your Honor.

THE COURT: They are admitted.

MR. MATTHEWS: They are exhibit number four.

THE COURT: Admitted.

Doctor, have you examined all of these hospital records?

A Yes, sir.

THE COURT: When did you examine the plaintiff for the first time?

A You have my chart.

MR. MATTHEWS: You want your chart?

A Yes. (Handed).

MR. MATTHEWS: I don't think the Judge is asking when you examined Mr. Wakim for the first time. I think he is asking when you examined the records. Isn't that your question?

THE COURT: I want to know when he examined Mr. Wakim for the first time.

MR. MATTHEWS: I misunderstood you.

A On December 21st, 1971.

THE COURT: You examined him for the purpose of testifying and not for the purpose of treatment?

A That's right, Your Honor.

THE COURT: Did you take a statement from him at that time?

A With the help of his attorney,  
yes, sir.

THE COURT: Do you want to tell us what  
examination you made and what he told you?

A I made a plain orthopedic  
examination and he told me he was injured aboard the  
SUE VICTORY when he fell about two years prior to that;  
that he fell backwards and struck his back and his head.  
He was able to continue working on that day; but the next  
day he developed pain in his back, radiating down the  
left leg. He continued to work, but after a day or so,  
he couldn't work anymore. And, he stayed in his bunk for  
a day or so. He told me he was taken off the ship at  
Okinawa and was flown home. He was then under the treatment  
of the Public Health Service at that time. He was treated  
for a period as an outpatient; and, he was thereafter  
admitted as an inpatient for diagnosis. He had a gamut  
of treatment as an outpatient. He had a myelogram.

He was adjudged permanently not fit for sea duty  
recently and has been referred for rehabilitation to a  
non-seagoing occupation. He told me he couldn't do that  
because he had severe pain in the back and pain radiating  
down the left leg.

Q Would you go on and tell the Court  
about your examination and your findings?

A On my examination I found that he had



difficulty in walking but he could walk on his heels and toes.

I found that there was spasm of the vertebral muscles in the lumbar spine. Forward flexion was possible, five degrees. Hyperextension was carried out to meet right and lateral flexion of ten degrees. Straight leg raising on the left could be carried out ten degrees on the examining table. On the right it could be carried out sixty degrees off the examining table.

The knee jerks and ankle jerks were equal. There was a one-inch atrophy of the left thigh and a half inch atrophy of the left calf. There was some tenderness in the sciatic nerve in the posterior thigh area. There was good strength of extensor Hallucis longus. There was hypesthesia of the entire left lower extremity from the inguinal cruce involving the entire leg.

I took examination of the lumbar spine which revealed a large amount of retained radio Paque myelographic material.

THE COURT: What did that indicate?

A This indicated that he had a mild myelogram previously; that's all.

THE COURT: Go ahead.

(Questions by Mr. Matthews)

Q Did you examine Mr. Wakim again last night?

A Yes.

Q Would you describe to the Court your findings at that time?

A At that time I found that he had been operated on since he came in and was walking on two canes with extreme difficulty in getting about. He had extreme difficulty in undressing and getting onto the examining table. Both lower extremities were quite weak.

At that time I did not elicit the knee jerk or ankle jerk. There was scars on the posterior part of the lumbar area and a scar over one of the iliac crests. I believe it was the right; but I am not sure.

THE COURT: When was he operated on?

A He told me he had been operated on in the interim.

THE COURT: Can you tell me when that was?

MR. MATTHEWS: Wasn't that in December of 1973?

THE COURT: That's okay. I thought he was operated on the week before or something like that. I just wanted to know approximately when it was.

A He told me he was operated on in December, 1973; that since the operation there was less pain down the leg; but he was much more weakened. He had to walk around with the two crutches and that both lower extremities were weak.

On the initial examination I found some weakness in the left upper extremity as well as on the second examination. And, since the operation, he tells me with



the passage of time, the weakness in the upper extremity has improved. The left upper extremity was normal in the strength.

Q And now, Doctor, you have also looked at the medical records, am I correct?

A Yes.

Q Would you tell the Court, based on your medical experience and based on your review of the records, the purpose of the surgery?

A The purpose of the surgery was to improve the pain radiating down the left leg by exploring the back and releasing pressure on the nerves in the back, emanating from the back and going down the leg.

Q Now, in the Staten Island records that you reviewed, when was the first complaint of pain and weakness in the right leg?

A I believe it was when he first came.

Q The outpatient records are in the back of that folder, Doctor.

A The outpatient report shows he was complaining of weakness in the left leg right from the first time he went there on the night of 12-6-69; there is a note that there was complaint.

Q Now, Doctor, when was the first time according to those records, the Public Health Service examined his back?

THE COURT: The records are in evidence. Why do we need him to look at those? Why can't you tell us?

MR. MATTHEWS: That was in the Fall of 1970, wasn't it?

A That's approximately right.

Q Of course. In a word, they are findings consistent with yours?

A Yes, sir.

Q Were they consistent with an injury from a fall?

A Yes.

Q Do you have an opinion, Doctor, as to whether the weakness in the left leg was related to the injury to the back?

A Yes, I do.

Q And what is that opinion?

A I feel it was related.

Q And, how was it related?

A Well, this man had been working at hard labor up until the time of his fall. He had complained and had difficulty with his leg and weakness in the leg, with a difficulty in expressing himself because he doesn't speak English; ever since the fall, with the treatment almost consistently thereafter and with inability to work followed by an eventual operation to his back, there was no traumatic relief in his condition and probably the condition got a little worse after the operation.

THE COURT: Are you of the opinion he is permanently and totally disabled?



A Yes.

THE COURT: He will not be able to engage in any gainful occupation?

A I believe he can engage in any occupation that does not require standing, lifting or anything like that. But, in making answers and answering the question, I will possibly not be so definite. The man has got a language difficulty; he could engage in a gainful occupation.

THE COURT: He could be an orthopedic surgeon if he had the training or a lawyer or a Judge?

A Yes.

THE COURT: Did any portion of his disability result from a disease other than injury?

A No.

THE COURT: Did he tell you he had been beaten up a couple days before the accident?

A He told me he had been beaten up several weeks before the accident; and that after a short period of convalescence, he returned to work and he did his full duties; he was okay until the accident.

THE COURT: Were the injuries you saw consistent with the injuries he stated when beat up?

A I would say so, but when he fell, he struck the back part of his head, his entire back, and the low back. The injury I saw, actually the beat up injuries, affected the same area. They could have been the injuries as described to me by the patient. However, whether the statement from the patient that he had no difficulty and

he recovered from the beat-up injuries, assuming that he did do that and went back to full work during the interim period of time, I would have to say it was the second injury.

THE COURT: I think we talked about this the last time. Your conclusion is based not only on the physical examination but also on the truth of what Mr. Wakim told you?

A Yes, sir; that's right.

THE COURT: Anything further?

MR. MATTHEWS: Yes, Your Honor.

THE COURT: Go ahead.

(Question by Mr. Matthews)

Q Doctor, when you saw Mr. Wakim in November of 1971, you got a history at that time, isn't that correct?

A That's right.

Q Now, that history didn't include anything with regard to any mugging before this, did it?

A No.

Q When you saw Mr. Wakim last night, did you talk to him at all about this mugging?

A Not to him directly, no, sir.

Q Now you reviewed those medical records, didn't you?



A That's right.

Q When you're talking about whatever injuries were sustained or whatever history of that, are you referring to what is contained in those records that you reviewed last night?

A Also, statements, yes, plus other statements.

Q You are talking about statements from me?

A That is right.

Q Did I describe to you, to your recollection of what I said?

MR. REID: Your Honor, I object to counsel testifying either directly or indirectly.

THE COURT: I am pretty good at this. I have been on this Court for 25 years. You can go ahead.

( Question by Mr. Matthews)

Q Doctor, did I describe to you the mugging?

A You did.

Q I did? Did I say anything to you about the man being hit or falling down?

A No. The description I got of the mugging is that somebody grabbed him around the neck, his neck was pulled back and two other people grabbed him by the legs and pulled him into an alley and beat him up.

Q Now, Doctor, I would appreciate it if you would give the Court - - Your Honor, there are some terms I

wanted to be sure the Court understands, if that's all right.

THE COURT: Did the medical records of the Marine Hospital refer to the mugging?

A Yes, they do refer to it, sir.

THE COURT: So at the very first time you examined him, you knew of the mugging?

A No, sir, I didn't have the records at that time.

THE COURT: When did you get the records?

A First time, last night.

THE COURT: All right.

MR. MATTHEWS: Your Honor, I am just going to go through this.

THE COURT: What words do you want to know about?

MR. MATTHEWS: I would just want to go through this, Your Honor, and be sure all of the terms are in.

THE COURT: I have a medical dictionary in my office if I have any problem with the terms. I can always look them up.

MR. MATTHEWS: May I take a moment then, Your Honor, to see whether there is anything that should be clarified at all here.

THE COURT: Unless the doctor uses the words in a non-scientific sense of his own definition other than those in the medical dictionary.

MR. MATTHEWS: Your Honor, there are a few of them. Could I take a few minutes to go over them. Your



Honor probably knows them.

THE COURT: Go ahead.

(By H. Matthews)

Q I am referring to the narrative summary of April 23d, 1973, Doctor. I see there he was given - - they talk about Flip Test and Laseque Tests.

A Yes.

Q Are those standard tests for back injuries?

A You wouldn't find a Flip Test in the medical dictionary. It's private. The Flip Test is a test in which one, the patient is examined sitting down, you examine his knees like (indicating) and he can raise it. and a person can sometimes raise his leg all of the way. When the patient was examined lying down, and he can raise his leg all of the way, the same test would indicate that there is - - no one does it equal on the other side. When they say - one, the Laseque is positive and the Flip signs were positive, this means they were consistent, straight leg raising signs, both when the patient was distracted by examining other parts of his body and doing the normal kind of straight leg raising.

THE COURT: That would demonstrate he wasn't pretending that he had the injuries or the physical condition from which he described?

A That's right.

THE COURT: Go ahead.

(Question by Mr. Matthews)

Q Now, Doctor, they also indicated the straight leg raising was positive on the left at 60 degrees which was due to sciatic radiation. The sciatic nerves run from the back down into the legs?

A Yes.

Q One of the things that doctors look for is the change in their reflexes?

A Right.

Q Were there changes in reflexes?

A Yes, there were.

Q In what way?

A The knee jerk was absent on the left and the ankle jerks were absent on the left.

Q Was there any other weakness on the left?

A They found weakness of the plantar flexor; that is of the big toe muscle; the muscles that bend the big toe, extensor of the big toe.

Q Doctor, do you believe that there will be some further improvement in Mr. Wakim's condition?

A No.

Q You think it's permanent at the present time?

A Yes, sir.

MR. MATTHEWS: Thank you.



THE COURT: Go ahead, Mr. Reid.

CROSS EXAMINATION

BY MR. REID:

Q I think we have gone through these exhibits here the other day, Your Honor. May we mark some exhibits? We have some reports from the pursor and the doctor. We have some doctors' reports.

THE COURT: I don't have them. I just have the depositions.

MR. REID: I thought we had attached the master certificate here, Your Honor.

THE COURT: Have you got another copy?

MR. REID: Yes, sir.

THE COURT: Give it to him. (Hands document to witness).

MR. REID: Wait just a moment. I don't want him to see it right now.

THE COURT: Are you asking about the clinical record of April 23d, 1973?

MR. REID: No, sir. I am not asking about that.

THE COURT: Go ahead.

(Question by Mr. Reid)

Q Mr. Wakim has signed a statement here, Your Honor, which has been marked defendant's exhibit B for identification, dated 10-11-70, which I would like to offer into evidence.

THE COURT: It is already in.

MR. REID: Marked I.D.

THE COURT: I have admitted all of the exhibits.

(Question by Mr. Reid)

Q Mr. Wakim has signed this statement. Doctor: "I was walking on the sidewalk when I was attacked by three men, one from the back and one from each side. The one from the back tried to strangle me. They dragged me into a dark alley. I fell to the ground and passed out from the beating."

Now, Doctor, with that assumption of facts you could come to the same conclusion, could you not, as you did this morning concerning a fall on the deck? In other words, without a history of a fall on the deck, a history that I just gave you, you could come to the same conclusion you did this morning, could you not?

A I couldn't come to the conclusion, for the reason that he didn't - - I would have to assume that there probably would be difficulty immediately thereafter with inability to work, and the subsequent history. It's the period of time that makes me not come to the conclusion.

Q I 'm asking you to forget the facts, Doctor, that on the history and course of events



that transpired thereafter, including those of the Marine Hospital, and your examination, you could come to the same conclusion, could you not, with the history of the fall as I have related to you?

A           You would have to give me more than just that. You would have to tell me when he started to complain, assuming that there was no fall on the ship, when he started to complain of weakness in the lower extremity, etc., etc.

Q           Now, you have the hospital record. When was that?

A           The hospital record states that he developed pain on the ship after the fall. But, let's say there was no fall, and he developed pain sometime in four days before his admission, his first being seen in the hospital in Okinawa, and then he was flown back to New York for treatment for that.

Q           Have you seen his record in Okinawa?

A           No, sir.

Q           I will show you this in the master certificate and doctor report on the back. (Handed it).

            You don't see there, Doctor, the slipping and falling on the deck, do you?

A           No.

Q           You see a history of mugging?

A           I do.

Q           You see treatment of the doctor for the mugging? Right?

A That's right.

Q You see no history of weakness in the left leg?

A No, sir.

Q The first time you see weakness in the left leg is in the Marine Hospital records?

A That's right.

Q Now, what day was that?

A The first time is several days later.

Q I don't know what you mean by "several" .

A The first time that he's seen at the Marine Hospital is 12-6-69.

Q What was the first diagnosis in this case?

A The first impression - - that there was no diagnosis. The first impression was weakness, subjective, questioned the idiology. They didn't know. They put, good chance psychogenic.

Q The neurological examination was negative, was it not?

A Yes.

Q Based upon my question to you, Doctor, again the history of Mr. Wakim, as stated - - as I read it to you, and the Doctor's report in Okinawa, and the first record in the Marine Hospital, would you say then the



fall which he had and the result of the mugging is just as consistent with your statement? In other words, if he had no history of the fall, you could come to the same conclusion, couldn't you, Doctor?

A I would have to really know the time interval between the mugging and the onset of symptomatology. Here we have a doctor who is seeing this man, thinking he is sick enough, and he is sick enough, to have him flown back from a period of time when he is working full time on a ship. I would have to explain to myself what is happening during that time.

Q A lot of people who have falls, they work for a while full time and then they have symptomatology?

A Well, working as a seaman with overtime, I think that would be pretty hard.

Q You've been to sea?

A I never sailed as a seaman, no, sir; I have a good amount of experience with the sea.

Q How many hours a day do you think they work?

A They can work eight hours; they can work ten hours, sometimes they work overtime.

Q This man was an ordinary seaman. He stood lookout. He is standing there; he's a lookout on the bridge; he's standing there; he's doing a trick at the wheel; he's standing there; he may do some work on the

deck, weather permitting; that's not very laborious work, is it, Doctor?

A I think if you would give me - - if you were to tell me the man had a mugging and then did hardly any work at all at sea, and also to assume further that the fall did/happen, whether the mugging <sup>not</sup> could be a cause of it, it could be, assuming that he didn't really work at sea after the mugging, and assuming there were was no fall.

Q Well, the doctor there in Vietnam ----  
THE COURT: I don't see why you are arguing with this man. The records are here. I know what he has testified to.

MR. REID: Very well.

THE COURT: At the conclusion of the case, you will have an opportunity of arguing your case.

(Question by Mr. Reid)

Q When was it, Doctor, according to the Marine Hospital, did they finally come up with the diagnosis of herniated disc?

THE COURT: Do you know?

MR. REID: I don't know, Your Honor. As I would guess, it was about a year later.

Q One year later?

COUNSEL: Yes, sir.

Q When you saw this man, I believe it was in December?

A December of '71.



Q Do you have his report,  
Mr. Matthews? December 23, 1971 you made no diagnosis  
at that time that this man had a herniated disc, did you?

A I didn't record any diagnosis, no.

MR. REID: I have no further questions.

THE COURT: Anything further?

MR. MATTHEWS: No.

THE COURT: That's all, Doctor. You may step  
down. Now you can call your doctor.

MR. MATTHEWS: Your Honor, the Doctor has some  
xrays.

THE COURT: They are admitted. Dr. Mauer, if  
you want to sit here and listen to the testimony of  
Dr. Balensweig, you can. If all of the questions are not  
brought out by the attorneys, you can suggest some  
questions to Mr. Matthews to ask him.

THE WITNESS: Okay; thank you, sir.

- - - - -

DR. HOWARD BALENSWEIG was thereupon produced  
as a witness in behalf of the Defendant, and having been  
first duly sworn to tell the truth, the whole truth, and  
nothing but the truth, was examined and testified as  
follows:

THE CLERK: Please be seated. State your full  
name and spell your last name.

A. Dr. Howard Balensweig, B-a-l-e-n-s-w-e-i-g.

THE COURT: Are there any questions about

Dr. Balensweig's qualifications?

MR. MATTHEWS: None.

THE COURT: The qualifications are admitted.

THE COURT: When did you examine Mr. Wakim?

A I first saw him early this year, May 21, 1974. Then I saw him again on October 3, 1974. My father examined him. He is now an inactive partner. He saw him on October 28, 1970.

THE COURT: I think it is stipulated. You could read the report and the report of your father would be admitted into evidence.

MR. MATTHEWS: Your Honor, I would also say this: The findings of the senior Dr. Balensweig are reported in Dr. Howard Balensweig's report of May 21, 1974 without, perhaps, a few immaterial comments. I will leave it up to the Court. Dr. Howard Balensweig's review of his father's findings is about a half page, whereas his father's report is some four or five pages.

THE COURT: Are you suggesting that we not hear the father's report?

MR. MATTHEWS: Only that if we do have the father's comments and so forth, I am going to have to cross examine Dr. Balensweig with regard to it.

THE COURT: That's all right.

MR. REID: Thank you.

THE COURT: I thought we had a stipulation that



if Dr. Balensweig's father were called, he would testify in accordance with his report..

MR. REID: That's right. That was the stipulation.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. REID:

Q I think you were telling us when you saw Mr. Wakim.

A Yes.

THE COURT: I am interested in knowing whether the fall could account for the injuries from which Mr. Wakim suffered at the time your father saw him and at the time you saw him, and at the present time. I am also interested in knowing whether those same injuries could have resulted from the alleged mugging. I would like to know whether it was due to the fall or to disease or if the injuries from which he is now suffering could have resulted from an act that occurred in the year 1970 or 1971. These are varying things I am interested in.

A Yes, sir.

THE COURT: You don't have to give me a lot of medical talk about the things which are not relevant to the issue. I am assuming the man is badly injured now. If that's the case. I want to know why and whether it has something to do with the action brought here.

A Yes, sir.

MR. REID: Your Honor also wanted to know, do you, Your Honor, whether the mugging and the fall had anything to do with it?

THE COURT: I suggested that first.

A First, there are a few facts that I obtained last night more than any other time; that was when I read the record, which I didn't have before.

After surgery in December of 1973, this patient had exploration of two discs spaces and was found not to have any evidence of a herniated disc. So, that diagnosis of herniated disc is out. The reason he was operated on was on suspicion that he had a herniated disc, which he did not have.

THE COURT: What is the significance of that?

A That is the diagnosis carried at the Marine Hospital from 1971 when he was primarily fit for duty until now was wrong.

Secondly, this man had no complaint of back pain in the Marine Hospital records one year after the accident. He complained mainly of numbness of the left arm, left leg. He was worked up for possibly demialating (phonetic) disease such as multiple sclerosis. He occasionally complained of a pain, but didn't localize it on the lower left arm or left leg.

When my father saw him in October of 1970, he moved his trunk normally and made no complaint



relative to his back.

It was not until November, 1970, a year after the accident, that he started to complain of back pain. At that point he was sent to the neurosurgeon, Dr. Holman, and the orthopedic consultant, Dr. Pirelli (phonetic); and they started to work him up, thinking the weakness in his left knee and the diminished nature meant a slipped disc in the back. The neurosurgeon said he didn't have one. Dr. Holman said: "I think he did." Next he said, "He did." Dr. Pirelli said he did. Dr. Pirelli is the Chief of Orthopedics at the Marine Hospital. This patient was extensively worked up. The electro-myelograms were negative. He had a myelogram done in Lebanon. No one knows the results. He had the same dye in the spinal column; in other words, doing a repeated myelogram. In 1971, it was reported as negative. And, on the basis of complaint of back pain progressing starting the year after the accident and the pain coming down his left leg and weakness and numbness, they finally operated on him without doing a repeated myelogram, in this case, which I think was incorrect. They finally fused him because they found nothing. The general orthopedic procedure is, if you believe a patient has a cause for back pain, you explore. You don't find a disc and do a fusion. Maybe they have something wrong with one of the joints down there. You can do something if there is a

stiffness and they will feel better. However, from the beginning, this appears to be a psychogenic problem. It was called that by the neurosurgeon, by the neurogenic surgeon and the diagnosis just crept in mistakenly. At the end of 1970 and early '71, it was on the basis of this action he was carried as permanently not fit and finally operated on without adequate medical reason.

THE COURT: The condition from which he suffers now is what? Why does he walk with two canes?

A Psychogenic. Because he doesn't have to walk with two canes. He didn't walk with two of the canes prior to surgery. He has a good cause of pain in the back. He has a non-union of a spine function.

THE COURT: The condition from which he now suffers did not arise for at least a year after the alleged accident or mugging; isn't that correct?

A No, the condition from which he now suffers is from surgery, because of subjective complaint. The subjective complaint arose from one or the other fall; but the subjective complaint had no reality. The idea he had a slipped disc originated in the 1971.

THE COURT: He never complained of the back pain for about one year?

A That's

THE COURT: Can you account for the back pain from the accident, even though he didn't complain of



pain in the region of the back for a year?

A That's entirely medically unreasonable. I can believe a patient falls down and has delayed back pain for a few days if they sprain their back or if they develop a slipped disc, you might have leg pain without back pain for as long as a couple of months. But to have back pain a year after an accident without having a cause for back pain discoverable at the surgery is entirely unreasonable.

THE COURT: Any cross examination?

MR. MATTHEWS: Yes.

THE COURT: Go ahead.

#### CROSS EXAMINATION

BY MR. MATTHEWS:

Q Dr. Balensweig, how many reports have you prepared in connection with Mr. Wakim?

A I have prepared three reports. One was review of records. One was examination of May, '74; and there is an incomplete one that I started October, '74.

Q We can forgive you for it not being complete. Mr. Reid hasn't given me the benefit of the one where you reviewed the record. I would have to ask the Court to bear with me a moment. I would like also to see the incomplete one, if I might.

A You can see it.

THE COURT: Did you see the hospital records for the first time last night?

A I saw the early hospital records for

the first time last night. I had some scattering of records in '71; before that, '72. The earliest report and the records of '73, I did not have available until last night. The records for '74, I had available at the time I started my reports. So, I read that a few days ago.

MR. REID: I think that can be explained. Your Honor. We didn't get the records.

THE COURT: That's all right.

Mr. Matthews, we will take a five-minute recess, to give you an opportunity to talk to your Doctor, and see what ideas he has of questions he wants you to ask Dr. Balensweig.

MR. MATTHEWS: I would be delighted.

THE COURT: We will take a five-minute recess.

(Recess took place, after which the following occurred):

THE COURT: Go ahead.

CROSS EXAMINATION (continued)

BY MR. MATTHEWS:

Q Dr. Balensweig - - - .

A Yes.

Q If a patient came to you and complained they had injured, for instance, their upper back, would you feel it would be good practice to examine their lower back as well?

A I don't do it as a routine if they limit their complaint to the upper back, no.



Q Suppose a person had a fall and related the history of a fall and complained of injuring the upper back, you wouldn't examine the lower back?

A Not unless they had some symptoms going down the legs.

Q Suppose they complained of weakness in the legs?

A Then, I would look at the whole person.

Q All right. And from insight, with Mr. Wakim, this would be someone that spoke perfect English, am I right?

A Yes.

Q Suppose you had somebody you weren't quite sure you understood them or not and they just said back, or they pointed back here (indicating), would that be even more reason to examine the low back as well?

A Certainly.

Q Doctor, when Mr. Wakim went to the Public Health Service in Staten Island for the first time - the first time you had your report, you spent two and a half hours reviewing those records, right?

A Yes.

Q When you went there, it was two days after he had left the ship in Okinawa, am I right?

A He went there December 6th. I don't know when he left the ship at the moment. I think you have my records.

Q If I were to tell you the records from Okinawa was December 4th, would you take my word that is right?

A Certainly.

Q Did he complain at that time of pain in his upper back?

A He complained of an injury to his upper back, but not pain.

Q Oh, he had been complaining of an injury to it. Doctor, I have got you at a disadvantage. In order to ask you these questions, I have got your notes. Mr. Reid is going to give you another copy.

A Okay.

THE COURT: Go ahead.

Q So, he did complain about his back the first time off the grill; do we agree on that?

A Upper back.

Q Would it make any difference to you if he had complained just about his back; if he had just said back?

A If he had said back, I would look at his whole back.

Q That would make a difference to you?

A Yes.

Q And that would be without regard to whether the complaint was made to a doctor or to a lay person, would it?



A Unless it's made to me, I wouldn't, no.

Q I have an exhibit I will offer later,  
Your Honor.

THE COURT: Instead of asking him all of these  
technical questions, why don't you get down to business.

MR. MATTHEWS: Okay.

THE COURT: You are not going to throw sand in  
my eyes, Mr. Matthews. There is no jury here. You  
just ask him the questions you want to ask him.

MR. MATTHEWS: Fine, Your Honor

Q Did he complain of a pain in his left  
leg or arm, weakness of the left arm and left leg with the  
pain on climbing stairs in December of 1969?

A We have volume 1.

THE COURT: Did he?

MR. MATTHEWS: He did. It's in the Doctor's  
report.

THE COURT: All right.

Q Would that change your opinion as to  
whether he didn't have any complaint for some ten months  
with regard to his back and leg, Doctor?

A It wasn't pain in his back. He said  
pain.

Q On February 3d, did he complain of  
paraplegia of the left leg?

A Yes, he did.

Q Now, Doctor, are you expressing an  
opinion to this Court that this man was malingering?

A No.

Q Did you notice in the medical record that even though he had a not fit for duty status he was complaining because he had to wait so long for a neurological appointment?

A Yes.

Q You did notice that?

A Yes.

Q They were concerned about a concussion, weren't they, when he was seen initially?

A When he was seen initially, his main complaints were headaches; then weakness, very soon afterwards, weakness, left arm and left leg.

Q They were concerned about a brain injury?

A They were concerned of a brain injury and the myelating disease. They took a spinal tap and brain scan.

Q They took a spinal tap and brain scan?

A Right.

Q Would it be fair to say they were concentrating their effort on the possible brain injury?

A Actually in March of 1970 when they hospitalized him they did it to rule out a tumor and rule out the myelating disease. That was their main concern.



Complaint of weakness and thickening of left arm, and leg weakness.

Q Doctor, when your father examined him in 1970, are you telling this Court that he didn't examine him for a back injury?

A What he did, he did a thorough examination, including testing his trunk. He found the normal motion of the back and no complaint.

Q Doctor, did he test him for a back injury?

A Yes, certainly.

Q He did a Flip test, didn't he?

A Yes, sir.

Q He found reflex changes in the left leg; isn't this true?

A Yes, sir.

THE COURT: What does that mean?

A What it means is he couldn't explain why - - I think it was the leg - the left knee jerk was diminished. I think he said he had difficulty getting it. He had difficulty getting a left knee jerk; a little difficulty getting the left ankle jerk.

(By Mr. Matthews)

Q He had complained of numbness in that left leg at the clinic on January 29th, 1970, hadn't he?

A Yes, he had.

Q Now, shortly after he was seen by your Dad, that was one of the diagnoses made at the Marine Hospital, of a possible herniated disc, am I right?

A That was early in 1971, as I recollect.

Q Doctor, do I understand correctly that a herniated disc can be one cause of nerve root compression?

A Yes.

Q There can be others as well, can there not?

A Yes, sir.

Q Is it known medically, Doctor, that a disc may bulge at some times and not at others?

A Variation in the size of the bulge depends on how much fluid there is in the disc. Usually the variation in symptoms from a bulging disc depends on where the nerve root is in relation to the disc.

Q That's a positional matter; isn't that correct?

A Yes.

Q Some people may have what they call a slipped disc and it may actually slip out and bulge at one time and not at others; isn't that correct?

A It slips down; it never disappears. In the few cases that I have seen myelograms done, five years ago, the myelograms have been the same. The symptoms vary from nil to acute. So actually the disc doesn't change its shape very much at all. What happens, either the nerve root is being stretched by it or the nerve root lies off it.

Q Doctor, you took xrays?

A I did.

Q You brought them with you today, did you?

A Yes.



Q If we would have time, Your Honor, could the Doctor show the fusion?

THE COURT: Is there any question about the fusion?

MR. REID: No.

MR. MATTHEWS: Yes, there is a definite question, isn't there Doctor?

A The fusion is not fusing.

THE COURT: There is no question he had a spinal fusion and the fusion is not fusing?

A Right.

THE COURT: That's good for you. What are you complaining about? He has already testified to that.

(By Mr. Matthews)

Q Doctor, if the fusion is to be effective, is it your opinion, that there will have to be further surgery?

A Yes, that's my opinion that once you have done a fusion, if you believe the patient complained of back pain and think it is due to the non-union of the fusion, you go ahead and do it over again. However, the indications for a fusion here would, in my opinion, be non-existent; therefore, there is a big question in my mind whether or not a further fusion should be done.

Q Doctor, you're not telling the Court that they operated just on this man's complaint, are you?

A I am.

Q You are?

A Yes.

Q Are you stating there were no positive findings from the Public Health Service?

A           What I am saying is some surgeon there thought he had reflex exchanges. They all agreed that the sensory changes were not realistic. They reported negative EMG on three occasions, which is a negative finding, and dye in the spine; and, their reason for surgery was, as Dr. Pirelli has said, his reason for surgery was exploration. In other words, I wanted to take a look because this patient has been complaining of pain for two or three years; he is disabled. I won't do him any harm because he is already disabled. Let's take a look and see if we can make him better. That's <sup>the</sup> rationale.

In my opinion, that is not sufficient rationale knowing he had no back pain for one year. And, if Dr. Pirelli had looked in the Marine Hospital records and noticed that, I don't think he would have done the surgery.

MR. MATTHEWS: Your Honor, I don't like to interrupt Dr. Balensweig.

THE COURT: Go ahead.

Q           I don't think you really answered my question.

THE COURT: He has already said there was no basis for the operation.

(By Mr. Matthews)

Q           Yes, you have said there is no objective findings; is that what you're telling the Court?

A           That's right.

Q           The Laseque test, is that an objective test, Doctor?

A           No.



Q It's not an objective test?

A No.

Q The Flip test, is that an objective test?

A No, sir.

Q I see, the reflexes, are they objective tests?

A They are when they are consistent. However, frequently in examination of three years, four years, reflexes were symmetrical; on times they couldn't get them on the left side. A patient can eliminate his reflexes if he tenses.

Q Doctor, they felt this operation was necessary?

THE COURT: There is no question about it. We have gone over that so many times.

Do you think the condition from which he is now suffering is functional rather than physical?

A The condition that he was suffering before surgery was functional. Part of what he is suffering now is functional and part is the fact that he's been operated on.

THE COURT: Do you believe that if he could be treated psychiatrically that problem would be resolved, that he could walk?

A Yes, sir.

Q Do you think the failure of the spinal fusion to fuse properly would be a deterrent to him being able to perform any kind of work if the psychiatric problems were taken care of?

A           What you have to do is constantly brace him very well and give him psychiatric care if the psychiatrist thinks he needs it.

THE COURT: What do you mean by "brace him very well"? Isn't that another operation, or brace him intellectually?

A           Brace the back, give him a good rigid back support.

THE COURT: Would you have to go back in there and fuse the back?

A           No, what I mean, you would give him a parental corset; you take the cast of the trunk and you make a plastic corset; if he gets absolutely no relief from that or practically none, then the pain is psychogenic; you don't try to do a fusion. If he gets some relief from it, you support him by getting his emotional reaction and try to emotionally resolve it, and then you can consider doing a spinal fusion. You wouldn't do a spinal fusion at this point prior to seeing whether an actual rigid bracing helps.

(By Mr. Matthews)

Q           Did the patient indicate whether he had less back pain since this surgery?

A           He said he had less leg pain since the surgery and he felt that it was a little better, but he wasn't able to be that specific.

Q           Doctor, would your knowledge of this surgery, the xrays that you have taken with regard to the fusion, do you have an opinion that if the man has a refusion,



which you say is indicated, how much longer it would be following that refusal until he would obtain the maximum benefit of medical care?

A Yes, I do.

Q What is that opinion?

A Maximum improvement after fusion, if successful, is usually about a year post surgery. In apprehensive people, it may take a year and a half.

Q Where the fusion has not taken before, you have to be a little cautious too, don't you, Doctor?

A You have to do a different type of fusion.

MR. MATTHEWS: Thank you.

THE COURT: Any further questions?

MR. REID: No further questions.

THE COURT: That's all. Thank you.

\* \* \* \*

THE COURT: I have serious doubt whether plaintiff fell on the vessel. I don't know how badly he was injured from the mugging. I don't think he was injured too badly. I was impressed with the testimony of Dr. Balensweig. I haven't always agreed with Dr. Balensweig. You called him once before and I didn't agree with him at all. But this man seems to have the problems Dr. Balensweig testified to. I take it he has had functional disorder. I don't think his principal problem was physical, but was psychological. I wanted to check the hospital records myself carefully.

I notice one other thing, the testimony of the two experts are diametrically opposed. They can't both be correct. The plaintiff doctor said he was suffering from a slipped disc and they repaired that slipped disc.

MR. MATTHEWS: Do you expect us to say anything in this connection?

THE COURT: Yes.

MR. MATTHEWS: I would ask you please, your Honor, to have the reporter transcribe that part of Dr. Mauer's testimony that had to do with the operation.

THE COURT: I will look at his testimony and also at the reports.

MR. MATTHEWS: It is conceded they did not remove this disc, your Honor.

THE COURT: But they did a spinal fusion.

MR. MATTHEWS: They did the spinal fusion, yes, your Honor.

THE COURT: Do you say the testimony of the doctors is consistent with each other?

MR. MATTHEWS: No, certainly not. I don't say that, your Honor. I just wanted to correct one thing that apparently your Honor thought.

THE COURT: It may well be after I look at the testimony, I will ask that the plaintiff be sent to another expert.

Earlier I mentioned a situation that existed in another case that I handled some years ago. Dr. Balensweig indicated that this was an unnecessary operation and that this man was put on the shelf as a result of the operation.



The ship is liable for all the consequences of its wrongful act if he was treated because of the fall, whether the operation was needed or not; it wouldn't make any difference because the ship would be liable for it even if he had a minor injury or if he had a functional disturbance.

It is my view that he wasn't hurt. Here a man came to the United States and had not worked for four months. He got on this vessel and was beaten up. This was the first time he was ever on that job. But that wouldn't make any difference if he got hurt on the vessel as a result of the slipping. But if, on the other hand, he got this condition as a result of being beaten up, a condition which is not connected with any fault on the part of the vessel, in my view the vessel would not be liable.

I don't know what the situation is as far as maintenance and cure. If he was ill while on the vessel because of a functional disturbance connected with his service on the vessel, it seems to me he would be entitled to maintenance and cure, regardless of fault of the vessel. You ought to pursue these alternatives, even though he may not be entitled to anything by reason of the fault of the vessel, he may be entitled to maintenance and cure until his condition is stationary.

MR. REID: There are cases on that point, your Honor. I will give you some cases.

THE COURT: Does it say he is entitled to maintenance?

MR. REID: Well, it all depends on whether he is in the course of his employment.

~~THE COURT: Don't these cases say that a man who~~

goes ashore and gets beaten up is in the service of his vessel?

MR. RHID: I think that is the law, Your Honor, but I would like to check it.

THE COURT: It doesn't make any difference whether he was beaten up on the shore and the vessel isn't liable, I think he is entitled to maintenance, the entire period of time. I think that is the law.

This is a more difficult case than I thought. I thought it was a simple case of whether he slipped on the vessel. He has the burden of showing that.

I wasn't very impressed with Mr. Williams. In addition to that, there were all kinds of inconsistencies in Mr. Wakim's testimony.

Even though Mr. Wakim may not have known the English language very well, I think he speaks and understands the language better than the interpreter did here. If he really had a backache or a condition, I think he would have communicated his problem to the purser or the mate. I don't think he is that bashful that he would have been unable to get his point across.

As I listened to the evidence I thought to myself: Here is a case <sup>in</sup> which the ship is going to be liable, no matter what, because going ashore, getting beaten up, he is still in the service of the vessel. There is a famous Supreme Court of the United States case on that precise point. If that is the case, even though he was suffering from a functional rather than a physical condition, he might be entitled to maintenance and cure until his condition became stationary. I am not saying definitely that is the law. I think you ought to



take a look and see what the situation is.

If you want to have the testimony of your physician transcribed and the testimony of Dr. Balensweig's transcribed, go ahead and do it. I am telling you that I was more impressed in this case with the testimony of Dr. Balensweig. But I reiterate, I haven't made up my mind.

MR. MATTHEWS: This is for the guidance of counsel in preparing a brief for Your Honor?

THE COURT: That's right. I will give you two weeks to file your brief. I will give Mr. Reid two weeks to answer. Mr. Matthews, I will give you one week to reply.

MR. MATTHEWS: Well - -

THE COURT: I will give you two weeks to reply.

MR. MATTHEWS: That's a little reverse of the order that would normally follow by closing statement, but whatever Your Honor directs.

THE COURT: I wanted to say to you, Mr. Matthews, I think if I were you, I would take the laboring because you have got the burden of proof, in view of what I have said here. I would let Mr. Reid answer. Then if you don't want to file a reply that's perfectly all right with me. I thought, perhaps for your benefit you would want to do that.

MR. REID: How extensive do you want Mr. Matthews to go into all the facts of liability as well as relations?

THE COURT: I am not going to stop Mr. Matthews from doing anything he wants.

MR. REID: I see.

THE COURT: I don't need Mr. Wakim's testimony. If you wanted to discuss your doctor's testimony, I will be glad to listen to it. The same thing is true with Dr. Balensweig. I am going to look at your doctor's reports together with the hospital records. If you want to give me the testimony of those two physicians, you go ahead and do it.

\* \* \* \*

STATE OF NEW YORK :  
COUNTY OF NEW YORK:

I, JERRY HARRIS, hereby certify that I am a duly qualified Court Reporter, not a party to the foregoing action or interested in the said proceedings; that I sat on October 9, 1974 and recorded the foregoing testimony of Dr. Irving Nauer and Dr. Howard Balensweig, and to the best of my knowledge and belief it is true and correct.

DATED this 18<sup>th</sup> day of October, 1974.

  
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REPORTER



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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

	_____	)	
HANNA B. WAKIM,		)	
		)	
	Plaintiff,	)	
		)	
-against-		)	No. 70 Civ. 2848
		)	
UNITED STATES OF AMERICA,		)	
		)	
	Defendant.	)	
	_____	)	

TRANSCRIPT OF PROCEEDINGS

- - -

BEFORE:

The Honorable Gus J. Solomon, Sr. Judge, Sitting  
By Special Assignment in the Southern District of New York.

APPEARANCES:

Mr. Paul C. Matthews, Attorney for Plaintiff;  
  
Zock, Petrie, Reid, Curtin & Byrnes, of Counsel  
By: Mr. Edwin K. Reid, for Defendant.

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>COURT</u>
HABIB AWAD				
Interpreter Sworn Page 2				
HANNA B. WAKIM				
By Mr. Matthews	4			
(Continued)	52			
By Mr. Reid		65		
(Continued)		76		
BRYANT WILLIAMS				
By Mr. Matthews	19			
By Mr. Reid		30		
WILLIAM ARMSTRONG				
By Mr. Matthews	45		50	
By Mr. Reid		47		
CLARK SHEEHAN				
By The Court				79
By Mr. Reid	81			
By Mr. Matthews		83		



\* \* \*

MR. MATTHEWS: I have an interpreter here, as Your Honor knows. I believe that, perhaps, will expedite the trial if Mr. Wakim could give his answers in his own language. He has learned a lot of English in the last five years. But, I think I would prefer the questions being put to him through the interpreter.

THE COURT: Why don't you try and see if he understands English. If he can't, you will have the interpreter to help him out; we can swear the interpreter.

HABIB AWAD

was thereupon sworn as the interpreter.

THE COURT: What language does Mr. Wakim speak?

MR. MATTHEWS: He's Lebanese; it's the Arabic language.

THE COURT: What is your name?

HABIB AWAD: My name is Dr. Habib Awad. I'm  
a doctor of psychology, Your Honor.

THE COURT: Can you speak the Arabic language?

HABIB AWAD: I have spent time in the Middle East. It's all Arabic and Lebanese. I am from Lebanon.

1 I understand it fully.

2 THE COURT: Can you translate from English  
3 into Arabic and from Arabic into English?

4 HABIB AWAD: Your Honor, I was ----

5 THE COURT: Don't give me a speech.

6 HABIB AWAD: I was translating during World  
7 War II. I was listening to enemy broadcasts in several  
8 languages and transmitting them into English and interpret-  
9 ing them.

10 THE COURT: I am going to find the witness is  
11 qualified.

12 Have you spoken to Mr. Wakim?

13 HABIB AWAD: I have spoken to all of them.

14 THE COURT: Can Mr. Wakim understand you and  
15 can you understand him?

16 HABIB AWAD: We are both from the same country  
17 and speak the same dialect.

18 THE COURT: We will only need you to interpret  
19 when you are requested to do so. But, please stand by.  
20 We are going to ask Mr. Wakim to take the stand.

21

22

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24

25



HANNA B. WAKIM

1  
2 was thereupon produced as a witness in behalf of the  
3 plaintiff, and having been first duly sworn to tell the  
4 truth, the whole truth, and nothing but the truth, was  
5 examined and testified as follows:

6  
7 THE CLERK: Now, state your full name.

8 THE WITNESS: Hanna Wakim.

9 THE COURT: Mr. Matthews, with the consent of  
10 Mr. Reid, I think you should lead the witness on all  
11 of the preliminary matters up until the time where  
12 he had the accident. I am talking now about the  
13 time of the beat up.

14 MR. MATTHEWS: Yes, Your Honor, I will stop  
15 there.

16 THE COURT: Don't lead him from then on.  
17 Prior to that time, lead him. Is that all right,  
18 Mr. Reid?

19 MR. REID: It's all right, Your Honor.

DIRECT EXAMINATION

20  
21  
22 BY MR. MATTHEWS:

23 Q Mr. Wakim, you were born on August 13, 1931 in  
24 Lebanon?

25 A Yes.

1 Q What sort of work did you do in Lebanon?

2 A First through the interior -- first I was working  
3 with the engineers who were making the roads for the  
4 Lebanese government. Then I worked in the airline, German,  
5 Luft.

6 Q Was that German airline Luft Hansa?

7 A Yes.

8 Q Was that as an office boy and driver?

9 A Yes.

10 Q And, as a messenger?

11 A Yes.

12 Q Did you work for Lewis Tonser (Phonetic Spelling)  
13 from July 1st, 1960 to June 30, 1968?

14 A Yes.

15 Q And from March 17, 1969 to June 5, 1969?

16 A Yes.

17 THE COURT: Go ahead.

18 MR. MATTHEWS: Your Honor, I have a letter  
19 from that company which has been marked. I would  
20 like at a later time to offer it into evidence.

21 THE COURT: All right.

22 Q (By Mr. Matthews) Are you a permanent resident of  
23 the United States?

24 A Yes.

25 Q Have you applied for United States citizenship?



1 A Yes.

2 Q When did you come to the United States as an  
3 immigrant?

4 A 1969.

5 Q Did you apply to be able to go to sea?

6 A Yes.

7 Q With a union?

8 A Yes.

9 Q Was that the Sailors Union of the Pacific?

10 A Yes.

11 Q Did you obtain a ship on October 4, 1969?

12 A Yes.

13 Q Was that the SIOUX FALLS VICTORY?

14 A Yes.

15 Q Was your job on that ship as an ordinary seaman?

16 A Yes.

17 Q At that time what was your familiarity with the  
18 English language? Should I lead on this or not, Your  
19 Honor?

20 THE COURT: Go ahead.

21 Q Did you just speak a very few words of English?

22 A Yes.

23 Q Had you ever gone to sea before?

24 A No.

25 Q Were you given a physical examination?

1 A. Yes.

2 Q Were you passed for that physical examination? I  
3 have a slip, Your Honor, which is Exhibit 1.

4 THE COURT: I don't think there is any dispute  
5 about that.

6 Q What was the state of your health up until this time?

7 THE INTERPRETER: It was perfect.

8 Q Had you ever had any back problem?

9 A. No.

10 Q Had you ever been bothered with headaches or dizzy  
11 spells?

12 A. No.

13 Q On the SIOUX FALLS VICTORY, you were on the 12:00  
14 to 4:00 watch?

15 A. 12:00 to 4:00, yes.

16 Q That means you worked -- Your Honor's familiar with  
17 it?

18 THE COURT: Go ahead.

19 Q Fine. You stood a wheel watch?

20 A. Yes.

21 Q You stood lookout?

22 A. Yes.

23 Q You worked out on deck; is that correct?

24 A. Yes.

25 Q If you worked out on deck, except between 12:00 and



1 4:00, you were paid overtime; is that correct?

2 A. Yes.

3 Q Now, you joined the SIOUX FALLS VICTORY and you  
4 got the job in New York. You were hired here in New York,  
5 right?

6 A. Yes.

7 Q But, you got on the ship in Sunny Point, North  
8 Carolina?

9 A. Yes.

10 Q From Sunny Point, the next stop was Panama; is that  
11 correct?

12 A. Yes.

13 Q Was there a purser on the ship?

14 A. Yes.

15 Q Did he take care of the doctor and medicals?

16 A. Yes.

17 Q Between Sunny Point and Panama, did you go to see  
18 the purser? Did you get a seasick pill from him?

19 A. Yes.

20 Q Did that make you feel better?

21 A. Yes.

22 Q Did you do all the work between Sunny Point and  
23 Panama?

24 A. Yes.

25 Q How long was the ship in Panama?

1 A. Less than a day.

2 Q. The crew was given shore leave; am I right?

3 A. Yes, yes.

4 Q. Did you go ashore?

5 A. Yes.

6 Q. Alone or with others?

7 A. No, with others.

8 Q. And, what happened when you reached the shore?

9 A. I went with my companions and we walked throughout  
10 the street and then we found a bar and my companions  
11 invited each other to drink at the bar. Since I do not  
12 drink, I left them there and I went looking into the  
13 streets for to buy souvenirs for my people.

14 Q. Would you describe what happened when you did that.

15 A. I said -- let me see, while I was walking, it was  
16 in front of a liquor store, three people came, one hold  
17 me on my neck and two by my legs, right and left, and  
18 they made me enter under a bridge. In that section,  
19 there was a little small bridge covering the streets;  
20 they entered me in there. It was the entrance of a  
21 building that they made me enter.

22 MR. MATTHEWS: Your Honor, I think he indicated  
23 that. Did Your Honor notice?

24 THE COURT: I read that.

25 A. They took all my money; and, they took all my seaman's



1 paper and my wrist watch; and they took it also.

2 Q How long did all of this take?

3 A It's one, two minutes.

4 THE COURT: Did they strike you?

5 A No.

6 THE COURT: Did they hit you in any way?

7 A No.

8 THE COURT: Go ahead.

9 Q (By Mr. Matthews) Did you get up?

10 A Yes.

11 Q When you got up, what did you do?

12 A I shouted, "seaman paper; seaman paper," and run  
13 after them to ask them to give me back at least my seaman's  
14 paper.

15 Q Were they still in your sight?

16 A Yes. They were in my sight.

17 Q Were you able to catch up with them?

18 A No.

19 Q Did you report this to the police?

20 A In front of the liquor store there was a man who  
21 had seen all that happened; he had telephoned to the police.

22 Q Did the police come?

23 A Yes.

24 Q How much time did you spend with the police?

25 A I went with the police to the police station. They

1 discussed matters with me and then I came back to speak  
2 to the purser because the purser was also in that section --  
3 the bosun.

4 THE INTERPRETER: What does he mean by  
5 bosun?

6 MR. MATTHEWS: The Court is familiar with the  
7 word.

8 THE COURT: Then did you go back to the police  
9 station again?

10 A. Yes.

11 Q (By Mr. Matthews) When did you finally leave the  
12 police station approximately?

13 THE INTERPRETER: I do not remember; but I  
14 feel it was about noon.

15 Q It was daylight at any rate?

16 A. Yes, it was daylight; it was in the day.

17 Q Did you ask to be sent to a doctor in Panama?

18 A. No.

19 Q Did you return to the ship before she sailed?

20 A. Yes.

21 Q After you returned to the ship, what was the next  
22 port of call?

23 A. Cam Ranh Bay.

24 Q Did you perform all your duties between Panama and  
25 Cam Ranh Bay?



1 A Yes.

2 THE INTERPRETER: He wants to say something.

3 A Everytime they asked me to do overtime, I always  
4 did it willingly; I never refused.

5 Q When was that overtime first offered to you?

6 A After Panama.

7 Q After Panama, they started overtime?

8 A Exactly.

9 THE COURT: After Panama, they started what?

10 MR. MATTHEWS: Offering the overtime work,  
11 Your Honor.

12 THE COURT: All right.

13 Q (By Mr. Matthews) In your union, do you receive  
14 overtime pay for standing your watch on Saturday and  
15 Sunday?

16 A No, they don't pay anything. They tell me, "You  
17 have to work Saturday and Sunday." They wouldn't pay  
18 me overtime.

19 Q Now, what sort of overtime work did you do between  
20 Panama and Cam Ranh Bay?

21 THE INTERPRETER: It was mostly painting. I  
22 was painting all over and cleaning all over, whatever  
23 paint used to be taken off, I used to take it off.

24 Q Did you have to go aloft?

25 A Yes, I used to go up high to the bridge and also the

1 high places in that bridge.

2 Q Did you see the purser between Panama and Viet Nam?

3 A Yes.

4 Q What for?

5 A After we left Panama on our way, my hand began  
6 aching me. I did not know it was the result of painting  
7 or some other reason.

8 Q Did the purser give you anything?

9 A Yes, he gave me pills, red pills.

10 Q What happened after you took those red pills?

11 A After I took them, I vomited, only red, it's not  
12 blood or anything; I didn't know if it was because of  
13 those pills or anything.

14 Q Did the ship detour to Guam?

15 A Yes, it did.

16 Q Why, if you know?

17 A Because I understand they had two people land there  
18 in Guam.

19 Q Injured seamen or sick seamen?

20 A They were seamen; they were claiming back aches;  
21 and they made them land in Guam.

22 Q Did you continue to do your work between Guam and  
23 Viet Nam?

24 A Yes.

25 Q And overtime work as well?



- 1 A Yes, yes, overtime work as well.
- 2 Q Did the purser send you to a doctor in Viet Nam?
- 3 A Yes, he did.
- 4 Q Did the doctor in Viet Nam ask you what happened to  
5 you?
- 6 A No.
- 7 Q Did the doctor in Viet Nam have any paper from the  
8 ship?
- 9 A Yes. He had papers from the ship, he said.
- 10 Q Did the doctor give you medicine?
- 11 A Yes.
- 12 Q Did that help you?
- 13 A Yes.
- 14 Q How did it help you? What way?
- 15 A I felt better. I didn't feel any more aches.
- 16 Q How long did the ship remain in Viet Nam after you  
17 saw the doctor?
- 18 A It's about twelve days. It's registered with them.  
19 Asked their company. They sent me to the doctor the first  
20 day we arrived in Viet Nam.
- 21 Q That was the only time?
- 22 A Yes, yes, that was the only time.
- 23 MR. MATTHEWS: Your Honor, we have the log-  
24 book here. I suppose that would be the best evidence of  
25 when the ship left Viet Nam. I guess it is not in dispute.

1 THE COURT: The date when the ship arrived in  
2 Viet Nam and when it left is not in dispute, is it,  
3 Mr. Reid?

4 MR. REID: No.

5 THE COURT: Read them in if you want to.

6 MR. MATTHEWS: The logbook, Your Honor, shows  
7 0040 on November 26th, 1969, all lines clear, 0056  
8 pilot and tug away various courses as per master 0106,  
9 departure.

10 THE COURT: Let's get to the accident.

11 MR. MATTHEWS: I'm there.

12 Did you stand lookout that night?

13 A Yes.

14 Q (By Mr. Matthews) Approximately what time did you  
15 start the lookout?

16 THE INTERPRETER: From 12:00 to 4:00 as usual.

17 That's my time of work.

18 Q That would be after the ship left the dock, though,  
19 am I right?

20 A Yes.

21 Q Where did you go to stand lookout?

22 A Bow.

23 Q How long did you remain at the bow?

24 A Three-quarters of an hour.

25 Q What happened then?



- 1 A A telephone rang, my mate called me and said, "Wakim,  
2 come here."
- 3 Q Is that the gentleman who sits here in the courtroom?
- 4 A Yes.
- 5 Q What did you do then?
- 6 A I left the watch and I came up to meet the mate.
- 7 Q Did something happen to you on your way back to the  
8 bridge?
- 9 A I was between the second and third floors of the  
10 ship ----
- 11 Q Wait a minute. Your Honor, that is not a correct  
12 word.
- 13 A Between the first and second stages where they put  
14 the guards and where they put the things.
- 15 Q Between what number hatches?
- 16 A Two and three hatches.
- 17 Q Would you tell the judge what happened?
- 18 THE COURT: Before he goes ahead, I would like  
19 to hear the mate describe this thing. Is that all  
20 right?
- 21 MR. MATTHEWS: Fine.
- 22 THE COURT: You may step down. Call the mate.
- 23 MR. MATTHEWS: Mr. Wakim, you can sit here.
- 24 THE COURT: Is he your witness?
- 25 MR. MATTHEWS: He is Mr. Reid's witness.

1 THE COURT: Don't you have any witnesses other  
2 than this man on the accident?

3 MR. MATTHEWS: Not as to the accident itself.  
4 I have a witness as to the grease, Your Honor. To  
5 the best of my knowledge, there is no eyewitness  
6 to this accident.

7 THE COURT: I don't need the mate right now.  
8 I know there is a question of credibility. I thought  
9 the mate was your witness and if you could establish  
10 by independent evidence of the accident, then I  
11 thought you would be in a very good position. That's  
12 why I was going to give you the opportunity of  
13 calling the mate and then there would be no doubt.

14 MR. MATTHEWS: No, Your Honor. I don't expect  
15 this witness knows anything about this accident from  
16 the testimony that Mr. Wakim has given so far.

17 THE COURT: I thought he testified he was  
18 standing watch and received a call from the mate.

19 MR. MATTHEWS: Let's confirm that. Is that  
20 correct, sir, what he said so far?

21 MR. SHEEHAN: Yes.

22 MR. MATTHEWS: He started to stand lookout in  
23 the bow; is that correct?

24 MR. SHEEHAN: That's right.

25 MR. MATTHEWS: Then along around 1:30 or



1                   thereabouts, did you summon him to come back and  
2                   continue his lookout on the bridge?

3                   MR. SHEEHAN: Yes, sir.

4                   THE COURT: Did you see him fall?

5                   MR. SHEEHAN: No, sir.

6                   THE COURT: I am not going to ask you any more  
7                   questions because that wasn't the purpose of my  
8                   concern. When Mr. Reid wants you, he will call you  
9                   to the stand. If you want to get rid of the other  
10                  witness on the grease, you can do that.

11                  MR. MATTHEWS: Your Honor, I have to call  
12                  Bryant Williams.

13  
14  
15  
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25

BRYANT WILLIAMS

1  
2 was thereupon produced as a witness in behalf of the  
3 plaintiff, and having been first duly sworn to tell the  
4 truth, the whole truth, and nothing but the truth, was  
5 examined and testified as follows:

6  
7 THE CLERK: Please state your name in full  
8 and spell your last name.

9 THE WITNESS: My first name is Bryant Williams --  
10 Williams is the last name.

11 THE CLERK: All right, be seated.

12 THE COURT: Go ahead, Mr. Matthews.

DIRECT EXAMINATION

13  
14  
15 BY MR. MATTHEWS:

16 Q Mr. Williams, were you a member of the crew of the  
17 SIOUX FALLS VICTORY in November, 1969?

18 A Yes, I was.

19 Q What was your job?

20 A I was assistant cook which is the third cook.

21 Q Third cook?

22 A Third cook.

23 MR. REID: Speak up. I can't hardly hear you.

24 A I was assistant cook.

25 Q Was your job title actually third cook?



1 A Third cook.

2 Q Where were you roomed on the ship?

3 A On the port side in front of the beginning of the  
4 house of the ship.

5 Q Then, do I understand that forward of the housing,  
6 there are hatches?

7 A Yes, there is.

8 Q Did you share that room with anyone else?

9 A With the chief cook and the second cook, sir.

10 Q Did you have occasion to leave your room at about  
11 1:30 that morning?

12 A Yes, I did.

13 Q The morning the ship departed from Cam Ranh Bay?

14 A Yes, I did.

15 Q What was your reason for going out?

16 A Well, I wasn't sleeping. I was -- I was listening  
17 to some tapes I had. So, I knew about the time the guys  
18 got in their rooms, they didn't want to hear that noise.  
19 I was going on deck.

20 Q How were you dressed?

21 A I had shower shoes on, pants with a T-shirt on.

22 Q As you came out of your room, is that by the door  
23 that leaves forward out from the housing out to the deck  
24 in front?

25 A It's right by the door that comes from directly off

1 deck, yes.

2 Q Did you see Mr. Wakim?

3 A Yes, I did, sir.

4 Q You knew him before this?

5 A Yes, I knew him.

6 Q Where was he coming from?

7 A He was coming from off the deck.

8 Q What did you observe about him?

9 A Well, when I came in, he was examining himself, you  
10 know, as if he had fell or something. He had grease on  
11 him. He was commenting ----

12 MR. REID: I object to any conclusion the  
13 witness may draw.

14 THE COURT: I think it is a factual statement  
15 if he says he had grease on him. How much grease  
16 did he have on him?

17 A He had a little grease on his leg; he had some on  
18 his hand and like he was doing this when he came in the  
19 door. (Indicating) I don't know what's wrong with him.

20 Q Did you have a conversation with him?

21 A I just said, "hello." And passed on by.

22 Q What did you do then?

23 A I went on out on the deck.

24 Q Whereabouts out on the deck did you go?

25 A Well, when I first walked out on the deck, I just



1 stood there for a moment. You get your eyes together, you  
2 know; then I was going up forward to take a listen to my  
3 music because ----

4 MR. REID: I can't hear you.

5 A. I was going up forward. I was going to go up forward  
6 to listen to my music, my tape recorder. If I would play  
7 it too loud in the house, the guys would -- you know,  
8 that would disturb everybody within that side, top and  
9 bottom, officers up top and members that slept in my room.

10 THE COURT: What did you see? Did you see  
11 anything on the deck?

12 A. As I was going up forward, I seen some grease on the  
13 deck between the third and second hatch. You pass by  
14 the second hatch first. I was walking by that and then  
15 down there, there is some little grease.

16 THE COURT: How much grease was there on the  
17 deck?

18 A. Well, I seen a lot of grease.

19 THE COURT: A lot of grease?

20 A. Right, sir. When I say, "a lot," I'd say like it  
21 was leaking from somewhere.

22 THE COURT: Did you examine it?

23 A. Yes, I did look at it. I didn't walk in it because  
24 I would have had my robe on.

25 THE COURT: Had you ever seen the grease there

1 before?

2 A No, I didn't because I didn't go out there before.

3 THE COURT: Had you ever been out since the  
4 voyage began?

5 A Lots of times, several times.

6 THE COURT: You never saw any grease there  
7 before?

8 A No, I didn't see any grease.

9 THE COURT: Did you know who Wakim was at the  
10 time you saw him?

11 A Yes, I did.

12 THE COURT: Had you seen him before?

13 A All along the trip, the voyage, yes.

14 THE COURT: Did you go out on deck on previous  
15 nights during his watch?

16 A Not necessarily so. I mean, I don't really think so,  
17 because the fact is I went on deck whenever I felt a need  
18 to or wanted to. If I seen him, I seen him, him or anyone.

19 THE COURT: Did you ever see him limp or did  
20 you ever see him look as if he was ill or in discom-  
21 fort prior to that night?

22 A Before that night?

23 THE COURT: Yes.

24 A Well, I seen him when he came back from Panama; he  
25 looked like he had been in some trouble or something.



1 THE COURT: Tell me about that. Was his  
2 clothes in good shape or ruffled or what happened?

3 A. When I seen him from Panama -- when I was on the  
4 ship, I seen him the next day and looked like he was  
5 sleeping in his clothes.

6 THE COURT: Was his face bruised at all?

7 A. I didn't see none, sir.

8 THE COURT: Did you notice any cuts or bruises  
9 on him?

10 A. No.

11 THE COURT: You thought he slept in his clothes?

12 A. Right.

13 THE COURT: You didn't know he had been beaten  
14 up?

15 A. After I found out, sir.

16 THE COURT: Afterwards ----

17 A. I seen him in his clothes looking like he did, I  
18 found out he had been mugged and attacked and everything.  
19 He was shook up.

20 THE COURT: Don't a lot of people sleep in  
21 their clothes? How did that happen to attract your  
22 attention?

23 A. It attracted my attention because like I'm the first  
24 cook in the morning up and around. Like when I finish my  
25 work, I have a lot of time. But within the mealtime, before

1 the meal, I walk around, because my work is complete; and,  
2 I seen him when he came aboard.

3 THE COURT: What time was that?

4 A. I don't really recall. I mean like it was after  
5 breakfast; it was before lunch, I think it was.

6 THE COURT: Before lunch but after breakfast?

7 A. Yes.

8 THE COURT: What time did you have lunch?

9 A. Lunch goes at 11:00 o'clock 11:30.

10 THE COURT: He looked like he slept in his  
11 clothes. Were his eyes bloodshot or anything of  
12 that kind?

13 A. Well, yes. Looked like it, yes, I would say that.

14 THE COURT: He looked like he had spent a  
15 rough night?

16 A. Yes.

17 THE COURT: Would you say that?

18 A. Yes.

19 THE COURT: What else would you say?

20 A. Well, I'd say it looked like he had spent a rough  
21 night to me. I don't know what happened to him. Like he  
22 explained, he had gotten mugged and all that.

23 THE COURT: Did he tell you that?

24 A. No, I heard the guys talking on the ship, heresay.  
25 This is what I heard, heresay, after that.



1 THE COURT: Did he limp at all or was he in  
2 good shape?

3 A. He wasn't limping.

4 THE COURT: Did you see him that night?

5 A. Up in town, sir?

6 THE COURT: No, on the ship that night after  
7 he came back to the ship after the mugging?

8 A. No, I didn't see him.

9 THE COURT: When was the first time you saw  
10 him again after the mugging and before you saw him  
11 brush grease off his clothes?

12 A. Something like -- the very next time I seen him?

13 THE COURT: Yes.

14 A. The next meal.

15 THE COURT: At the next meal?

16 A. Yes.

17 THE COURT: Did he appear to be in good physi-  
18 cal shape?

19 A. To me he did, sir.

20 THE COURT: He took all of his watches as far  
21 as you know?

22 A. As far as I know, say it this way: I used to see  
23 him working on the deck. I used to wave at him. The  
24 guys around him, in talking to them while they would be  
25 working, I would be talking to them while they were painting.

1 I would talk to them.

2 THE COURT: He had no difficulty performing  
3 his work?

4 A. No.

5 THE COURT: That is as far as you could tell?

6 A. As far as I could tell.

7 THE COURT: Go ahead.

8 Q. (By Mr. Matthews) Mr. Williams, how did you converse  
9 with Mr. Wakim when you did?

10 A. Well, to be frank with you, it was rather funny  
11 and odd because the thing is, like where I come from, as  
12 a kid, we speak a potto (Phonetic Spelling) French language.  
13 I would remember some of the words I heard that I forget,  
14 years ago. So, then like when I tried to speak to him one  
15 day, he couldn't understand English, he told me -- asked  
16 me did I speak French. I told him, "no, but I could under-  
17 stand a little bit," you know. Like I would try to explain  
18 some of my words to him. He was trying to correct them in  
19 perfect French language to me. Like, as a matter of  
20 fact, every day, sir, he used to come by and he says,  
21 "comme say". I would give him the words back and converse.  
22 We wave off like we would try to converse with each other.  
23 Like sometimes he would use his hand in trying to explain  
24 things to me in English.

25 Q. Now, after you knew -- Your Honor, I don't recall



1 exactly where the witness left off.

2 After you saw this grease on the deck, did you  
3 go back toward the house?

4 A. I went back in the housing and went around on the  
5 starboard side and worked my way through the cables and  
6 what not and went up to the number two hatch and sat up  
7 there for a while.

8 Q For a few minutes?

9 A Well, I guess so, about twenty, twenty-five minutes  
10 because the sprays were coming off.

11 Q Then, did you come back?

12 A I went back in the mess hall. I went back in the  
13 housing on my way since I was on that way, I stopped and  
14 got a cup of coffee and went to bed.

15 Q While you were in the mess hall, did Wakim come in?

16 A Yes.

17 Q Did you have any conversation with him at that time?

18 A Yes, I did.

19 Q Will you tell the judge ----

20 MR. REID: I am going to object.

21 Q Tell the judge what you saw and what he said?

22 THE COURT: You object to the conversation  
23 between the parties? He is just an ordinary seaman  
24 or cook. I am going to overrule the objection.

25 Q The judge says you can answer the question, Mr. William

1 Do you understand it?

2 A The question was: Did I have a conversation with  
3 him?

4 Q Yes.

5 A Yes, I did.

6 Q Would you tell the Court what he said to you?

7 A I said -- when he came into the mess hall, myself  
8 and the bosun and a couple more guys were sitting in  
9 there. So, I was at the time making some toast. So, I  
10 walked by the door and I said, "How are you doing?" He  
11 said -- trying to tell me how he fell down and hurt him-  
12 self. He was trying to show me. I was just standing  
13 there listening to him. Like the bosun said to him, he  
14 walked towards the bosun. What they said, I don't know.  
15 I couldn't -- what I was doing, he came back and talked  
16 to me and said he hurt himself. I said, "Yeah? Why don't  
17 you go to the purser." Just like that.

18 Q Did you see him after that on the ship?

19 A Yeah, I seen him.

20 Q Did he make any complaints after that with regard  
21 to his back?

22 A Yes, he did.

23 MR. MATTHEWS: That's all I have, Your Honor.

24 THE COURT: You said he complained also to  
25 the bosun when he came into the mess hall?



1 A No, I didn't say. He was talking to the bosun.  
2 The bosun called him and said something to him. Now,  
3 what he said to him, I don't know.

4 THE COURT: Did you report the grease to  
5 anyone that night?

6 A No, I didn't.

7 THE COURT: Did you suggest to Wakim that he  
8 ought to go see the purser?

9 A Yes.

10 THE COURT: Did he understand you?

11 A I think so.

12 THE COURT: Do you know whether he went to the  
13 purser or not?

14 A No, sir. I think I left -- or he left me in there,  
15 I don't know.

16 THE COURT: Go ahead.

17

18 CROSS-EXAMINATION

19 BY MR. REID:

20 Q Now, Mr. Williams, when were you first contacted  
21 by Mr. Matthews' office concerning this case?

22 A Well, about two years ago or so.

23 Q Can you fix it better than that, the date better  
24 than that?

25 A No, sir, I really can't. Like I don't recall the

1 date because like I was going back and forth to the  
2 hospital; and, so, I was going to the hospital, something  
3 like two years; all of a sudden, I see him in the hospital.  
4 I spoke to him, "Hey, how you're feeling?" He said,  
5 "Oh, it comes from my back. Maybe you can help me." I  
6 don't know what he's talking about. So then he tells me,  
7 he said, "You remember when I hurt myself on the ship?"  
8 I said, "Yeah." He said, "I tell you about everything."  
9 I said, "Yeah, I remember that." Well, it wasn't too  
10 important to me even speaking on it. No one asked me  
11 until he asked me about it.

12 Q You say that was in the marine hospital?

13 A Yes, sir.

14 Q You said that was about two years ago?

15 A Yes.

16 Q 1971?

17 A Yeah, about two years or something.

18 Q You remember everything as you're testifying to now?

19 A Do I remember everything?

20 Q Yes.

21 A Well, I remember what I seen at that time. I mean  
22 not just about every particular thing; I mean like the  
23 incident or the act.

24 Q Did you -- when you were speaking to Mr. Wakim, did  
25 he refresh your recollection or you refresh his recollection



1 about what happened that night?

2 A. No, sir, I didn't.

3 Q. You discussed it, didn't you?

4 A. We discussed it in a sense. In other words, he  
5 asked me, could I help him. I asked him what he meant.  
6 So he told me he would like for me to take and be a witness  
7 for him to his attorney. I said, "For what, you're hurt,  
8 aren't you?" He said, "Yeah." He said, "Well, my attorney  
9 wants to ask you some questions." Myself, I said, "Okay,  
10 you can only tell what you seen."

11 Q. Well, did you discuss with him that day at the  
12 marine hospital the question of the grease being on the  
13 deck?

14 A. Pardon?

15 Q. Would you read the question back to the witness?

16 THE COURT: Did you talk to him about the grease  
17 on the deck?

18 A. No, I didn't talk to him about grease on the deck  
19 at the time I met him in the hospital.

20 THE COURT: Did you talk about the fact he  
21 fell on the deck?

22 A. Yes.

23 THE COURT: You recall that he had fallen on  
24 the deck?

25 A. That's what he told me. I didn't see him fall. He

1 told me this and I seen him.

2 THE COURT: You saw him brush off the grease?

3 A. Not brush it off. He was examining himself as if  
4 he was looking at something that was happening to him.

5 THE COURT: Go ahead.

6 Q. (By Mr. Reid) Then, what did you do?

7 A. When I talked to Wakim in the hospital?

8 Q. Yes.

9 A. I gave him my telephone number and told him to call  
10 me.

11 Q. How long was this conversation that you had with him?  
12 How long did you talk to him?

13 A. In the hospital?

14 Q. Yes.

15 A. I guess I must have talked to him for about five  
16 minutes, because the doctor called my name; and, I went  
17 to see the doctor.

18 Q. You gave him your telephone number. What happened  
19 then?

20 A. Well, a couple of weeks later, I get a telephone  
21 call from the attorney.

22 Q. Who was the attorney?

23 A. Mr. Matthews, there.

24 Q. And, when was it you went to Mr. Matthews' office?  
25 Can you fix the time?



1 A Well, I guess it was about a day or so after I  
2 talked to him on the telephone.

3 Q How did you get Mr. Matthews' telephone number?

4 A He gave me Mr. Matthews' phone number.

5 Q I thought you said Mr. Wakim gave you his telephone  
6 number?

7 A I gave Mr. Wakim my telephone number; I was amazed  
8 when Mr. Matthews called me. I really was, because I  
9 didn't give him my phone number. I gave it to him.

10 THE COURT: Have you got an impeaching document,  
11 Mr. Reid?

12 MR. REID: May I, Your Honor?

13 THE COURT: I think you have laid the founda-  
14 tion long enough unless you have something else.

15 Q (By Mr. Reid) Do you have a suit against the  
16 Government arising out of that voyage?

17 A Yes, I do, sir.

18 Q You have an attorney?

19 A Yes, I do, sir.

20 Q You have a back complaint too?

21 A Yes, sir.

22 Q You haven't worked since that voyage?

23 A No, sir.

24 Q You have been to the marine hospital?

25 A I have been back and forth to the marine hospital,

1 sir, taking treatment at the outpatient clinic.

2 Q That suit is pending here in this court?

3 A I think so, sir.

4 Q Your claim is for back injury also?

5 A Yes, sir.

6 Q Your claim is for back injury on the same day Mr.

7 Wakim's claim of an accident, isn't it?

8 A No, sir.

9 Q Pardon?

10 A Sir?

11 Q What day did Mr. Wakim's accident occur?

12 A The night we left the port. So, mine had to happen

13 Thanksgiving Day, because we were preparing for the

14 dinner about a day afterwards.

15 Q A day afterwards?

16 A A day afterwards, so, like that's going into the

17 third day or something like that.

18 Q On the day of your accident, was the ship arriving

19 in rough weather?

20 A Very rough.

21 Q Had you been riding in rough weather ever since you

22 sailed from Viet Nam?

23 A Since we came out of Viet Nam and came out of the

24 port, the water was very choppy.

25 Q The seas were about twelve to fourteen feet high,



1 weren't they?

2 MR. MATTHEWS: What time?

3 Q (By Mr. Reid) When you went out to breakwater out  
4 of the harbor?

5 A Out of the harbor?

6 Q Yes.

7 A I don't really -- I didn't look at it that way, sir.  
8 All I know is the sprays was coming over the side.

9 Q The sprays was coming over the side when you went  
10 up by number two and three hatches, wasn't it?

11 A Yes, it was.

12 Q The ship was riding high, was she not?

13 A You mean had less cargo on it, you mean?

14 Q Yes.

15 A Yes.

16 Q She was sitting high in the water?

17 A Yes.

18 Q A ship high in the water will ride easier than a  
19 loaded ship will, will it not?

20 A That's right, sir.

21 Q You said that was -- there was a lot of oil. Would  
22 you take your hand and put out how much oil was there on  
23 the deck?

24 A Where I had to step after the little walk of the  
25 cargo truck, I'd say it was about like so. (Indicating)

1 And, it was leaking from the truck -- it was going under  
2 the truck -- it was going under the and from the  
3 winch. It was about this much. (Indicating)

4 Q About two and a half feet or so?

5 A Wider than that.

6 Q Wider than that?

7 A Yes.

8 Q Let's see if we can get some dimension of how long  
9 it was and how wide it was.

10 A Well, to me, it looked like -- well, personally, I  
11 didn't measure it -- I looked at the oil. I know I didn't  
12 want to step all in it. So I got -- turned right back.  
13 I didn't measure it.

14 Q I am not asking you whether you measured it. Give  
15 us your best estimate.

16 A Well, say this way ----

17 Q About three and a half feet?

18 A About two and a half feet.

19 Q That's about three and a half, isn't it?

20 A This measuring of my arm, maybe so. I was just  
21 giving you a wider scale.

22 Q That's about how wide it was?

23 A To me?

24 Q Yes.

25 A Like I said, it was about so wide. (Indicating)



1 Q About the same distance?

2 A About two and a half feet in front of the step  
3 where I had to step off; but I could see it running under  
4 the truck.

5 Q What step are you talking about?

6 A The little step like so coming off the walk that  
7 we had between the truck and the hatch.

8 Q Where was the truck? Was it on the port side or  
9 starboard side?

10 A It was on the port side where I was coming out.

11 Q Mr. Wakim has testified in examination before trial  
12 that there was nothing on the port side of that deck.

13 Would that refresh your recollection as to  
14 whether anything was there or not?

15 A Yes, sir, it was some cargo there.

16 Q You said the cargo was on the starboard side. Does  
17 that refresh your recollection?

18 A Excuse me, sir?

19 THE COURT: I think it is an improper question.  
20 You are not asking him to refresh his recollection.  
21 Don't do that.

22 Q Now, was it overcast that night or was the moon  
23 shining?

24 A They had a moon out.

25 Q Pardon?

1 A They had a moon out.

2 THE COURT: I can't hear you.

3 A They had a moon out.

4 Q Was it a bright moon?

5 A I don't really remember. I know it was a moon out.  
6 I had a flashlight anyway.

7 Q You had a flashlight?

8 A Yes.

9 Q Did you put the flashlight down on the deck?

10 A Yes.

11 Q What are you doing with a flashlight being an  
12 assistant cook?

13 A Because I walk on decks. I walk ashore in streets  
14 and it's dark.

15 Q That flashlight belonged to you, did it?

16 A Yes.

17 Q It wasn't issued by the ship?

18 A No. It was my own property.

19 Q When you walked out on the deck, you had your flash-  
20 light?

21 A Right, sir.

22 Q You didn't have any difficulty seeing the oil on the  
23 deck with your flashlight?

24 A Well, would you be looking for things if you have  
25 shower slippers on?



1 Q Pardon?

2 A You have a pair of shower slippers on deck, you're  
3 looking for things naturally that guys drop on the deck.  
4 You wouldn't like to stand on all that cargo that was out  
5 there.

6 Q Would you say the moon was so bright you didn't  
7 need the flashlight to see the grease?

8 A A matter of opinion. My opinion might not be the  
9 same as yours.

10 Q I'm asking you what you saw and the circumstances  
11 there on that deck that night such as you could see.

12 A I don't walk without the flashlight. I could see  
13 without the flashlight to a certain distance. If I'm  
14 looking not to hurt myself, I would put a flashlight down  
15 there, sir.

16 Q I'm asking you, sir, due to the circumstances on  
17 the deck that night, without your flashlight, could you  
18 have seen the grease?

19 A I think I could have, yes, sir.

20 THE COURT: Is this the grease you fell on  
21 the following night?

22 A No, sir, I didn't fall in the grease.

23 THE COURT: How did you get hurt?

24 A I was working in the refrigeration downstairs.

25 THE COURT: All right.

1 Q (By Mr. Reid) You have had other claims for  
2 back injuries, have you not?

3 A Have I had other claims for back injuries?

4 Q Yes.

5 A Yes, sir.

6 Q How many?

7 MR. MATTHEWS: Your Honor, the number of  
8 injuries is irrelevant.

9 THE COURT: I will let Mr. Reid go. You have  
10 covered that point already.

11 MR. REID: All right.

12 THE COURT: You are suing the SIOUX FALLS  
13 VICTORY?

14 A Yes, sir.

15 THE COURT: Go ahead.

16 Q (By Mr. Reid) Did you actually see the grease  
17 dripping from the truck?

18 A I don't know whether it was coming from the truck  
19 or the winch. But I seen it on the deck.

20 Q I see.

21 A But I didn't walk in it, sir.

22 Q How far was that grease from the hatch coaming?

23 A I wouldn't say the distance.

24 Q About five feet?

25 A I wouldn't say that's five feet.



1 Q Four and a half feet?

2 MR. MATTHEWS: Why don't we have somebody  
3 measure it?

4 THE COURT: You can measure it after a while.

5 Q Was the grease circular like this fashion?

6 THE COURT: Is this the same question you  
7 asked when he said before it was about two and a half  
8 feet?

9 MR. REID: I withdraw the question.

10 THE COURT: How much more of this examination  
11 will you have? The reason is, I promised Mr. Matthews  
12 when his doctor came we would put him on.

13 MR. REID: I don't think I have but maybe a  
14 couple more questions to ask him. I would like to  
15 recall him if I may, Your Honor.

16 THE COURT: Will you remain here. We are  
17 going to put a doctor on now.

18 MR. MATTHEWS: Your Honor, as far as I'm con-  
19 cerned, the doctors can talk among themselves, which-  
20 ever has the more pressing engagements.

21 THE COURT: Let the doctor who came first take  
22 the stand.

23 MR. MATTHEWS: That's the Defendant's doctor,  
24 Your Honor.

25 MR. REID: Let's put his doctor on.

1 THE COURT: We'll put the Plaintiff's doctor  
2 on first.

3 (The testimony of Dr. Irvin G.  
4 Mauer and Dr. Howard Balensweig's  
5 testimony has been transcribed  
6 and filed with the Clerk's  
7 Office.)

8  
9  
10 \* \* \*

11  
12  
13 THE COURT: You had one other witness.

14 MR. MATTHEWS: Yes, Your Honor, if I could  
15 take Mr. Armstrong, he will be a very brief witness.

16 THE COURT: Go ahead. Are you through with  
17 your doctor?

18 MR. MATTHEWS: Yes.

19 THE COURT: What is Mr. Armstrong going to  
20 testify to?

21 MR. MATTHEWS: Mr. Armstrong is with the union.  
22 He is going to testify as to the work that would  
23 have been available for this man from the time of  
24 his accident in 1969 up until the present time. He  
25 will identify the wage rates which are contained in



1 a booklet. He will explain to Your Honor the  
2 supplemental benefits that are payable to a man.

3 THE COURT: Was there work between the time  
4 of the accident and the present time?

5 MR. MATTHEWS: That's what this man is going  
6 to testify to, Your Honor. He is familiar with the  
7 shipping conditions in the port of New York.

8 THE COURT: Is there any problem on that?

9 MR. REID: I really don't know, Your Honor,  
10 just what he is going to testify to.

11 MR. MATTHEWS: I told Mr. Reid during the last  
12 recess.

13 THE COURT: If you want to put the man on, you  
14 should have had a statement in writing. He is an  
15 expert. I will give you five minutes to finish with  
16 him. If you don't finish, you can come back at  
17 2:00 o'clock.

18 MR. MATTHEWS: Certainly, Your Honor.

19 THE CLERK: Please stand up.

20 THE COURT: I am not saying you can't bring  
21 him back. This case got started late through no  
22 fault of anybody's. Go ahead.

23

24

25

WILLIAM ARMSTRONG

was thereupon produced as a witness on behalf of the Plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Will you state your full name, please.

THE WITNESS: William Armstrong.

DIRECT EXAMINATION

BY MR. MATTHEWS:

Q Mr. Armstrong, are you with the Sailors Union of the Pacific?

A Yes, I am.

Q Are you familiar with shipping conditions in the port of New York during the last five years?

A Yes, I have been active for the port of New York for the last seven years.

THE COURT: Was there a lot of work for ordinary seamen?

A The work is put on a basis of registration or shipping cards and registered A and B and C.

THE COURT: This man was on the first voyage. Was he a permit man?



1 A He was what they call a C-man at the time.

2 THE COURT: A C-man?

3 A Yes.

4 THE COURT: Does he put in a plug or some-  
5 thing?

6 A No. He has to register when he gets off a ship.  
7 You register for the next job. Once he has employment,  
8 previous employment in the Sailors Union of the Pacific,  
9 he has preference over any other C-man.

10 THE COURT: In other words, if a man belongs  
11 to the SUP, even though he is a C-man, he gets  
12 preference over any other man?

13 A Any other new C-man.

14 THE COURT: Any other new C-man?

15 A Yes.

16 THE COURT: Was there plenty of work for C-men  
17 in the SUP at that time?

18 A At that time, yes.

19 THE COURT: For how long a period?

20 A Well, after one year, he receives his B book.

21 THE COURT: But has the shipping been good on  
22 the east coast?

23 A It's been good up to the last year. It slowed down  
24 in the last year.

25 THE COURT: SUP people in my port aren't doing

1 so well.

2 A Must be Portland?

3 THE COURT: Portland, yes, that's right.

4 You say in New York he could have gotten work first  
5 as a C-man and then as a B-man?

6 A That's right.

7 THE COURT: What would he have made?

8 A Well, I have the agreement here.

9 THE COURT: You can get that without me. Was  
10 there any premium pay?

11 A He had supplemental wages when you put ninety days  
12 aboard a ship, you get supplemental wages for every ten  
13 days a month. He would have gotten thirty days extra pay  
14 on leaving the vessel.

15 THE COURT: This vessel had to go into Viet Nam.  
16 Was that premium pay?

17 A He got paid premium pay while in the area -- in the  
18 war zone; he would have gotten premium pay on that ship.

19 THE COURT: Mr. Reid, what about that? Do  
20 you want to ask him any questions?

21 MR. REID: I just want to ask him this:

22

23 CROSS-EXAMINATION

24 BY MR. REID:

25 Q This man is from Lebanon. He came over here and got



1 a ticket from the union. You say -- is that what you call  
2 a C-man?

3 A. When a man gets his seaman's paper, he don't get that  
4 from the union. He gets his seaman papers from the Coast  
5 Guard at the time. I don't know how long he hung around  
6 the hall before he got his first job. When he gets his  
7 first job, that makes him have priority over any new C-man.  
8 He might wait six months for his first job. Once he got  
9 his first job, he has no problems from there on.

10 Q. He comes in and joins the union. Do they have to  
11 sign any papers or he just gives him something?

12 A. He gives him a C-registration card. That C-regis-  
13 tration card, under our agreement, is offered any other  
14 C-registrant if its older up to ninety days.

15 Q. Does he have to file any application with you?

16 A. Now, he does.

17 Q. At that time, did he?

18 A. No, they didn't at that time. We took them off the  
19 streets as we needed them because we needed a lot of men.  
20 At that time that was during the Viet Nam rifl.

21 Q. Did anybody talk to him before he was given the card?

22 A. I couldn't tell you. We just take them as they come  
23 in. We don't go and round them up or anything else. They  
24 happen to be there, they're the ones that get the job.

25 THE COURT: He was a Lebanese, would that have

1           deterred him from getting in the union after he  
2           first got a job?

3       A.     No. The only place that would have deterred him  
4           from getting a job would be on one company out of New York.  
5           That was the American President line.

6       Q.     (By Mr. Reid) When he came in for his card, did you  
7           converse with him in the English language?

8       A.     He comes in and shows whatever he has and registers.  
9           He shows his discharge. That's all we need to see.

10      Q.     I know. He is coming in; he hasn't got a discharge,  
11           he's coming in there for the first time in your union ----

12      A.     He's got his seaman's paper. He shows me the papers.

13      Q.     He doesn't tell you anything? What was the procedure,  
14           the ordinary procedure? If I walk in and show you this,  
15           can I remain mute and get a ticket from you?

16      A.     You say you want to register, it isn't remaining  
17           mute. He said he wanted to register to get a job.

18      Q.     Yes.

19      A.     We registered him as a C-man. And, he hangs around  
20           the hall.

21      Q.     What I'm trying to find out from you, how much con-  
22           versation goes on before the man gets his C-ticket you give  
23           him?

24      A.     Practically none. He says what he wants. Under the  
25           law, we have to register him. He shows the seaman's paper.



1 THE COURT: I think this is outside the scope  
2 of the direct examination. If you want to show  
3 this man can speak English as well as you, you can  
4 call your people. You have a mate here. You have  
5 other people. Not one of them said he spoke very  
6 well, good English. I think you are wasting my time  
7 and wasting this man's time. You are going beyond  
8 the scope of the direct examination.

9 MR. REID: I have no further questions.

10 MR. MATTHEWS: I have one question, Your Honor.

11  
12 REDIRECT EXAMINATION

13 BY MR. MATTHEWS:

14 Q At the present time, Mr. Armstrong, based on your  
15 observation and your experience, how many months per year  
16 could this man expect to be shipping?

17 A Well, at the time -- '68, '69, '70, he could have  
18 probably got at least nine months with no problem. Now  
19 he would probably get maybe six to seven months. We have  
20 a ruling that one C-man or B-man makes a trip on a ship  
21 every sixty days or more, he must leave that ship and go  
22 on another ship, you see. With an A-man, he can remain  
23 seven months on a ship once he gets his A. Then he leaves  
24 that ship after seven months and he gets ten days supple-  
25 mental wages in lieu of the vacation time.

1 Q How long does it take to be an A-man?

2 A Six years.

3 MR. MATTHEWS: Thank you.

4 THE COURT: We will take a look at the wage  
5 rates. We will resume at 2:15.

6 MR. MATTHEWS: I guess we didn't mark the  
7 other one, Your Honor. I have one here. It's marked  
8 9.

9 THE COURT: We will recess until 2:15. I will  
10 make it 2:30 so you can mark all your exhibits.

11 MR. MATTHEWS: Thank you very much.

12 (Noon recess.)

13

14

15 AFTERNOON SESSION

16 2:30 o'clock p.m.

17

18 MR. MATTHEWS: Should I have Mr. Wakim resume  
19 the stand?

20 THE COURT: Yes.

21 MR. MATTHEWS: Mr. Wakim, will you resume the  
22 witness stand.

23

24

25



DIRECT EXAMINATION (Continued)

1  
2 BY MR. MATTHEWS:

3 Q Mr. Wakim, would you describe to the Court the  
4 manner in which you fell?

5 A When I'm coming to work, I passed between this  
6 hatch.

7 Q Could I interrupt, Your Honor? That's not what I  
8 mean by the question. You have already told the Court  
9 about that, as I remember. I want to know the fashion,  
10 what happened to your body and so forth.

11 THE INTERPRETER: I left to a point -- I went,  
12 I slipped, my feet came in front of me. I fell on  
13 my head, it hit the floor hard.

14 Q Were you carrying a flashlight?

15 A Yes.

16 Q Did you drop the flashlight?

17 A Yes.

18 Q Were you able to get up without help?

19 A Yes.

20 Q Did you look at the area where you had slipped?

21 A Yes.

22 Q With the flashlight?

23 A Yes.

24 Q What did you see?

25 A I saw some -- so much oil on the floor.

1 Q Would you describe about how much oil you saw?

2 A About one foot, about one circular foot.

3 Q What shape was this?

4 A When I fell -- when I stepped on that circular oil,  
5 it was in a circular form, but my foot went on it; then  
6 it became a little larger.

7 Q Did you proceed back to the house, midship house?

8 A Yes.

9 Q Did you see anyone as you went into the house?

10 A Yes, I saw Mr. Williams.

11 Q When you got into the house, did you look at your  
12 clothing?

13 MR. REID: I think he is leading him a little  
14 too much.

15 THE COURT: That's all right.

16 A Yes.

17 Q What did you observe?

18 A I saw plenty of oil on all my suit.

19 Q Is he indicating some particular part?

20 THE INTERPRETER: He points to his shoe and he  
21 points to the left side of his suit on his leg and  
22 on his back. The oil was all on his leg and on his  
23 back.

24 Q Did you proceed to the bridge?

25 A Yes.



1 Q Did you report your fall to the mate on watch at  
2 that time?

3 A No.

4 Q Why not?

5 A First, because my English was very poor; I could  
6 not express myself. And, I felt at that moment probably  
7 that fall was not of a serious consequence.

8 Q Did you continue to stand your lookout on the bridge?

9 A Yes.

10 Q For approximately how long?

11 A After I was called to come to my watch, I worked for  
12 half hour, about forty-five minutes the most.

13 Q What did you do then?

14 A Then I came back to the mess hall.

15 Q Was anybody in the mess hall?

16 A As I remember, Mr. Williams was there.

17 Q Did you mention your accident to Mr. Williams?

18 THE INTERPRETER: "I explained the accident to  
19 him," he said.

20 Q How long did you remain in the mess hall?

21 A About half an hour.

22 Q What did you do then?

23 A And then I came back to my work upstairs.

24 Q Did you stand a wheel watch?

25 A Yes, I was.

1 Q How long are you supposed to remain on the wheel?

2 A All the time is one hour, third one hour on the  
3 third one hour, on the third, that means after 4:00 o'clock.

4 Q How did you feel when you were on the wheel watch?

5 A I was very unhappy and tired.

6 Q Did you have pain?

7 A I already begun to feel the pain.

8 Q Where?

9 A My head, my lower back; my left leg up to my foot --  
10 down to my foot.

11 Q Did you remain on the wheel watch until the full  
12 hour twenty minutes?

13 A No.

14 Q Why not?

15 A Because I thought -- I told the mate I not feeling  
16 good; he noticed I wasn't feeling good. He sent me away.

17 Q Did you go to your room?

18 A Yes.

19 Q While you were in your room, were you cold?

20 A No.

21 Q At some time in the morning, did somebody knock on  
22 your door?

23 A Yes.

24 Q Who was that?

25 A The orderly seaman.



1 Q Did he call out anything at that time?

2 A He called me for overtime work.

3 Q Had you worked overtime every day when it was avail-  
4 able up until then?

5 A Yes, I did.

6 Q When he called you this morning, what did you do?

7 A I got up and I tried to go to work and while I was  
8 wearing my shoes on my foot, was wearing my suit; I found  
9 a wound on the lower part of my own foot, a very severe  
10 wound. I couldn't work that day. Then I don't go. I  
11 could not work that day. I tried to go to work, but I  
12 could not go to work.

13 Q Did you leave your room or remain in your room?

14 A I think I did not leave my room.

15 Q Did anyone come to your room?

16 A Yes, the bosun came to my room.

17 Q And, after the bosun came to your room, did you go  
18 anyplace?

19 A Yes, I went to the purser.

20 Q What did you tell the purser?

21 A I couldn't talk to him, but with signs, I explained  
22 to him I felt I'm not feeling good.

23 Q Did the purser give you anything?

24 A When I saw him, showed him my foot wounded and my  
25 head aching me terribly; I made signs to my head, it's

1       aching me terribly and my foot was not in good shape.  
2       Then he give me pills; and I think it was seasick pills,  
3       white.

4               MR. MATTHEWS: Your Honor, could I ask the  
5       interpreter a question?

6               THE COURT: Go ahead.

7               MR. MATTHEWS: Would the word for "suit" be  
8       the same as trousers?

9               THE INTERPRETER: It was -- I mean, my trousers.

10      Q       Did you return to work, Mr. Wakim?

11      A       No.

12      Q       When you say -- well, let me go on.

13               Did you stand your watches?

14      A       I could not work on the deck; but I was keeping the  
15       watches on the wheel.

16      Q       After that, did your condition improve or stay the  
17       same or worsen?

18      A       It was worse or worsen.

19      Q       Did you continue to stand your watches all the way  
20       to Okinawa?

21      A       No, no.

22      Q       What happened?

23      A       They stopped me from working because they realized I  
24       could not work.

25      Q       Approximately how many days was that before you got to



1 Okinawa?

2 A. They do have the records themselves. Let's say,  
3 perhaps two or three days; but they will give you much  
4 better records themselves.

5 Q. Were you sent to a doctor at Okinawa?

6 A. Yes.

7 Q. Did others go from the ship at the same time to the  
8 same doctor?

9 A. What?

10 Q. Did others from the ship?

11 A. Yes, I have others who went to the doctor.

12 Q. Did the doctor have a paper from the ship about you?

13 A. Yes.

14 Q. Did you tell the doctor what was bothering you?

15 A. I did in signs.

16 Q. Now, did the doctor tell you you must leave the ship?

17 A. Yes.

18 Q. Did you go back to see the purser? I'm leading a  
19 little here, Your Honor.

20 THE COURT: That's all right.

21 A. Yes. I really came to the ship -- I did not know.  
22 it was the purser who called me and said, "You're going  
23 home."

24 Q. Then did the purser prepare your wage voucher?

25 A. He give me these papers you have in your hand.

1 MR. MATTHEWS: Your Honor, that's Exhibit 13.

2 THE COURT: All right, admitted.

3 MR. MATTHEWS: I will make an explanation with  
4 regard to it later on if you wish.

5 THE COURT: That's all right.

6 MR. MATTHEWS: The reason I say it, Your Honor,  
7 there are some discrepancies in the amount. But  
8 there was a retroactivity increase. Mr. Reid, I  
9 believe, has the accurate earning figure.

10 According to this document, the 5th of  
11 December, did you leave Okinawa on the 5th of  
12 December?

13 A. Yes.

14 Q. (By Mr. Matthews) Where did you go?

15 A. I came here to New York.

16 Q. And, when did you arrive in New York?

17 A. I came later at night, let's see, 12:00 o'clock,  
18 1:00 o'clock in the morning.

19 Q. Was that on the morning of the 6th of December? Was  
20 it the same day you went to the marine hospital?

21 A. Yes, in the same day, in the morning I went to the  
22 public health hospital, Staten Island.

23 Q. When you went to the Staten Island Hospital, did  
24 you tell them what was bothering you?

25 A. Yes.



1 Q Did you tell them you fell down on the ship?

2 A Yes.

3 Q Did you tell them you were unconscious? Is there  
4 a word for that?

5 THE INTERPRETER: Yes.

6 Q When you were robbed in Panama, did you tell them?

7 A Yes, I did.

8 Q Did you tell them you were knocked unconscious?

9 A No, I didn't.

10 Q Incidentally, about how long were you unconscious in  
11 Panama?

12 A Only a few minutes.

13 Q When you say ----

14 THE INTERPRETER: A few seconds, he said.

15 Q Was that before or after you got up and ran, after  
16 those men beat you?

17 A It was before.

18 Q Now, were you treated at the Staten Island Hospital  
19 later as an outpatient from the day you started until  
20 April 7th of 1970?

21 A I was first an outpatient and later on I was permanent  
22 in the hospital.

23 Q When you went there, were you made not fit for duty  
24 or fit for duty?

25 A All the time I went there, they said, "I'm not fit

1 for duty."

2 MR. MATTHEWS: Your Honor, although we have  
3 the hospital records in evidence, they don't always  
4 indicate on each injury the duty status.

5 THE COURT: I don't know why you are asking  
6 him these questions in the first place. There is  
7 no dispute about that.

8 MR. MATTHEWS: All right.

9 THE COURT: I don't see why you are asking him  
10 questions about which there is no dispute. Let's get  
11 down to things about which there are controversies.

12 MR. MATTHEWS: All right, Your Honor.

13 Q (By Mr. Matthews) When you left the hospital,  
14 according to the record, that was April 7th, did they --  
15 may I lead?

16 THE COURT: Go ahead.

17 Q Did they tell you you would be fit for duty in one  
18 week?

19 A Yes, at that time they told me I could work.

20 Q What did you do?

21 A He give me seven days work -- seven days rest at  
22 home after I left for severance. He said after those  
23 seven days rest at home then try to find out if you could  
24 work.

25 Q Did you do that?



1 A. Yes, I did.

2 Q. What did you do?

3 A. I tried to work.

4 Q. Where did you go?

5 A. I went to the union to ask for work.

6 Q. And, what did you find about your physical condition  
7 at that time?

8 A. And, I found I was doing -- it was impossible because  
9 I am unable to work.

10 THE COURT: He went and told the union he was  
11 too sick to work; is that it?

12 A. When I was coming up the stairs to see the union man,  
13 I felt so much ache that when I arrived I said I cannot  
14 work; I'm so sick; I'm so sick.

15 Q. You went back to the hospital on June 10th, didn't  
16 you?

17 A. Yes.

18 Q. According to the records -- may I lead, Your Honor.

19 THE COURT: I don't see why you're going into  
20 all this. The records speak for themselves. They  
21 are in evidence.

22 Q. Okay. Mr. Wakim, have you been continuously not  
23 fit for duty since October? That's in the record too,  
24 Your Honor; I'm sorry.

25 Have you done everything the doctors told

1 you to do?

2 A. Yes.

3 Q. Have you agreed to ever test this adjustment?

4 A. Yes, I did.

5 MR. MATTHEWS: Your Honor, there is a claim  
6 here for damages for wrongfully withholding mainten-  
7 ance. Now I want to explain to Your Honor my reason  
8 for asking a question or two about the man's family  
9 situation.

10 THE COURT: All right.

11 MR. MATTHEWS: It is not for any other purpose  
12 but this.

13 Do you have any children?

14 THE INTERPRETER: He said yes. He had the  
15 sign for two.

16 Q. (By Mr. Matthews) How old?

17 A. Thirteen and fifteen -- thirteen and sixteen.

18 Q. You haven't received any maintenance now in over  
19 four years; is that right?

20 A. Exactly.

21 Q. Have your children suffered?

22 A. Yes.

23 THE COURT: Where do your children live?

24 A. Lebanon.

25 THE COURT: Where is your wife?



1 A I've divorced my wife. She divorced me.

2 THE COURT: Where does she live?

3 A Here in New York City.

4 THE COURT: Don't your children live with  
5 your former wife?

6 A No, they are living with my father and my sister.

7 MR. MATTHEWS: Your Honor, they are not that  
8 wife's children.

9 THE COURT: All right.

10 Q Is that correct?

11 A No, they are children of the wife who is here.

12 Q When did your wife divorce you?

13 A About two years.

14 Q I was asking about the children.

15 A What is your question?

16 Q As a result of the lack of money, did the children  
17 suffer any?

18 MR. REID: I object.

19 A They suffered a lot.

20 Q In what way?

21 A We had to feed them very, very poorly. We had to  
22 dress them very, very poorly. They were in private school;  
23 I had to take them out of the private school and put them  
24 in public school; all these were suffering.

25 Q How were the public schools in Lebanon?

1 A. The difference is extreme, a heavy difference between  
2 the private school and the public school.

3 Q. How do you feel at the present time?

4 A. As you see, I'm in a very bad state of affairs.

5 Q. Do you have problems walking? Say yes or no?

6 A. Yes.

7 MR. MATTHEWS: That's all I have, Your Honor.

8 THE COURT: All right, go ahead.

9 MR. REID: Your Honor, may I put my third mate  
10 on. He has a plane to catch at 3:00 o'clock.

11 MR. MATTHEWS: No problem.

12 MR. REID: I would appreciate it if I could  
13 cross-examine him later.

14 THE COURT: Step down.

15 MR. REID: He tells me, Your Honor, he's  
16 changed his plane flight until 8:00 o'clock.

17 THE COURT: All right.

18  
19 CROSS-EXAMINATION

20 BY MR. REID:

21 Q. Mr. Wakim, how long had the oil been on the deck  
22 before your accident?

23 THE INTERPRETER: Mr. Reporter, could you read  
24 back the question, please.

25 (The question read back by reporter.)



1 A. I don't remember exactly at the present; perhaps  
2 it was the same day; perhaps the day before.

3 Q Does he know?

4 THE INTERPRETER: What?

5 Q Do you know, Mr. Wakim? Do you have actual knowledge  
6 of that?

7 A. What I know, I always answer it clearly; but this  
8 I don't remember. The thing which I am not sure, I cannot  
9 say it is so. I have to say doubtful.

10 Q Let me ask you this: Had you seen the oil on the  
11 deck before you fell?

12 A. Seeing what?

13 Q The oil on the deck before you fell at any time?

14 A. No, I didn't.

15 Q Now, when you went to the bow, did you have a flash-  
16 light?

17 A. Yes.

18 Q You go up the same side, the port side of the deck  
19 you came back on?

20 A. When I came the first time, I was near the sea; when  
21 I returned, I was more near to the winch.

22 Q Did you have a flashlight shining at that time?

23 A. Yes.

24 Q Now, when you left Okinawa, you came back on the same  
25 plane with Mr. Williams, did you not?

1 A. I think so.

2 Q He went to the marine hospital just about the same  
3 time as you did, didn't he?

4 A. The same time, no; it's not true. I saw him there.

5 Q When you went back on the plane with Mr. Williams,  
6 did you discuss your accident with him?

7 A. No, I did not.

8 MR. REID: Now, Your Honor, to shorten some  
9 time, I'd like to read from the Plaintiff's examina-  
10 tion before trial.

11 THE COURT: Do you have his deposition?

12 MR. REID: I have his examination before trial,  
13 Your Honor.

14 THE COURT: All of these depositions were  
15 examinations before trial. I have four of these  
16 depositions.

17 MR. REID: This is Plaintiff's examination  
18 before trial.

19 THE COURT: All right. Give me a copy.

20 MR. REID: I think Mr. Matthews has the ori-  
21 ginal, Your Honor.

22 MR. MATTHEWS: While I'm looking for that,  
23 Your Honor, I will give you my copy. I will swap  
24 with you if I find it.

25 (Deposition handed to Court.)



1 THE COURT: What page?

2 MR. REID: Page 9, Line 5.

3 "Q - Did you apply to the yeoman for a  
4 yeoman's ticket?"

5 "A - When I took the job they told me  
6 you come here and then when I go back we will give  
7 you the membership."

8 Then on Page 11, Line 9:

9 "Q - What did you do for a living in  
10 Lebanon? What kind of job did you have?"

11 "A - I worked in a survey, a government  
12 office with engineering. To survey the streets."

13 "Q - How far did you go in school in  
14 Lebanon?"

15 "A - Primary certificate."

16 THE COURT: How is this impeaching his testi-  
17 mony?

18 MR. REID: I don't think that was brought out  
19 by Mr. Matthews as to what he did when he was working  
20 in Labanon.

21 THE COURT: The purpose of using this is to  
22 impeach the witness.

23 MR. REID: I thought I could use it for any  
24 purpose, Your Honor. This is his examination before  
25 trial.

1 THE COURT: Are you offering the deposition?

2 MR. REID: No, just portions of it.

3 THE COURT: I pleaded with you to underline  
4 those portions you wanted to use. You didn't want  
5 to do that. Now you're wasting my time reading  
6 things I could read myself.

7 MR. REID: I didn't know Your Honor was  
8 referring to examination before trial. There are  
9 just a few things I want to read, that's all.

10 THE COURT: All right.

11 MR. REID: On Page 18, Line 17:

12 "Q - You say when you were walking and  
13 putting your flashlight on the deck as you walked  
14 along, you didn't see anything on the deck?"

15 "A - I was not putting it exactly on the  
16 deck. I was putting before me to see my way."

17 On Page Number 24 beginning at Line  
18 Number 10:

19 "Q - Do you mean to say that you saw it  
20 on the deck and that there was a winch by and you  
21 inferred that it came from the winch; is that what  
22 you are telling me?"

23 "A - What I notice is when I stood up  
24 I saw the oil near the winch but the reason -- how  
25 the oil came, I don't know."



1 On Page 29, Line Number 3:

2 "Q - Did you continue to stand your  
3 watch until the end of the voyage?"

4 "A. - It was just before we arrived in  
5 Okinawa, two days before we arrived in Okinawa."

6 "Q - I didn't ask you anything about  
7 Okinawa. Did you continue to stand your 4:00 to  
8 8:00 watch for the rest of the voyage?"

9 "A. - Yes."

10 MR. MATTHEWS: That should be 12:00 to  
11 4:00.

12 MR. REID: 12:00 to 4:00.

13 On Page 36, Line 10:

14 "Q - Had you registered with the union  
15 to ship out again?"

16 "A. - No I didn't due to this, because  
17 I have to pay arear duty."

18 On Page 58, Line 22:

19 "Q - When you fell where were your feet  
20 and head with relation to the winch?"

21 "A. - The winch was a little bit far but  
22 I was near the winch."

23 Page 59, Line 2:

24 "Q - Which was nearer to the winch, your  
25 head, your feet or your body itself?"

1 "A. - My feet."

2 "Q. - How far were your feet from it,  
3 five feet, six feet, four feet?"

4 "A. - Five feet, six feet, four feet."

5 Line 7:

6 "Q. - How far was your head from the  
7 winch?"

8 "A. - Five feet."

9 On Page 63, Line 18:

10 "Q. - Did your colleague tell you also  
11 that that's the reason that the mate told you to come  
12 in from the bow?"

13 "A. - Both of them told me that a storm  
14 was coming."

15 "Q. - That is why they took you off the  
16 bow?"

17 "A. - Yes."

18 Page 63, Line 23:

19 "Q. - What was the condition of your  
20 clothes after you got back to the bridge after you  
21 fell?"

22 "A. - As a result of my falling down my  
23 pants -- second day I noticed there was some oil  
24 and grease on my pants."

25 "Q. - What do you mean by the second day?"



1 Do you mean the morning after the accident or two  
2 days after the accident?"

3 "A. - Yes, the second day after the  
4 accident."

5 That's all the questions I have. I don't  
6 think I need any further cross-examination.

7 MR. MATTHEWS: No redirect examination.

8 Q (By The Court) After you fell, you went in to the  
9 mess room, didn't you?

10 A After I fell I went to the mate. I went up to the  
11 mate, to my mate, to the mate on the ship.

12 Q Did you talk to him?

13 A No.

14 Q Didn't you go into the mess room and talk to Mr.  
15 Williams?

16 A When it was my time to stand by, then I went o the  
17 mess room.

18 Q Did you see Mr. Williams?

19 A Yes.

20 Q Did you talk to Mr. Williams?

21 A Yes.

22 Q What did you tell Mr. Williams?

23 A He has already seen me. He has already seen me;  
24 but when I went and met him, I showed him again what  
25 happened to me because of that fall. My left foot was

1 wounded. The oil was on my pants, on me, on many parts  
2 of my other suit. I didn't -- I wasn't ----

3 THE INTERPRETER: He changed sentence. He  
4 said: "My foot was entirely numb. I showed him  
5 my pants and the rest of my foot, how it was,  
6 especially the pants."

7 Q What did he say?

8 THE INTERPRETER: He said, "He is not under-  
9 standing me because I was speaking in signs and he  
10 didn't think important to that story."

11 Q Did you talk to anybody else in the mess room?

12 A I do not remember if I have spoken to anybody else  
13 at the time.

14 Q The bosun was there, wasn't he?

15 A I do not remember if he was there.

16 Q When was the first time you told the mate or the  
17 bosun or the purser that you had fallen on the grease?

18 A The first time was in the morning when they called  
19 me to go work overtime; then I spoke to the bosun.

20 Q What did you tell him?

21 A I spoke to the bosun, Everett Williams; and, at  
22 that time my foot was not as numb as before; and I showed  
23 him the wound in my foot, showed him my pants how it was  
24 full of oil; the rest of my suit, how it was also oily?  
25 and I told him what should I do? He said, "Go to the



- 1 purser and tell him the whole story." All of this was  
2 spoken to the purser with signs, not words.
- 3 Q Did you then go to the purser and tell the purser?  
4 A Yes.
- 5 Q That was on the day after the accident?  
6 A The accident happened in the evening; it was now  
7 in the morning. The accident happened the evening of  
8 that morning.
- 9 Q Did the purser make out a written report?  
10 A I think he has made.
- 11 Q Did you sign it?  
12 A Yes, I did.
- 13 Q Did you tell him that you got hurt in the accident?  
14 A In signs, Your Honor, I told him I'm hurt because of  
15 that accident.
- 16 Q Did he understand?  
17 A I don't know if he understood what I'm saying or  
18 not.
- 19 Q Had you ever seen a doctor in Lebanon before you came  
20 to the United States?  
21 A You mean the first time I came to America?  
22 Q Yes.  
23 A No, Your Honor. The American Consul in Beirut has  
24 sent me to the doctor at the American University there  
25 who examined me fully and all the blood and all the rest

1 of my body and all the X-rays necessary, they took from  
2 me.

3 Q How long were you out of work before you got this  
4 job on the ship?

5 A I don't know exactly how long -- how many months,  
6 let's say four months, five months.

7 MR. MATTHEWS: That's covered in an exhibit,  
8 Your Honor. I have that. I don't know if Your  
9 Honor wishes the exhibit or not.

10 THE COURT: No.

11 MR. REID: Your Honor, in view of the Plaintiff's  
12 testimony, I would like to read from Page 67 on the  
13 deposition, on Line Number 7:

14 "Q - Did they ever treat you for your  
15 back while you were at the hospital?"

16 "A - No, I was not complaining of my  
17 back. They took water from my back with a syringe.

18 On Page Number 33 commencing on Page 32:

19 "Q - Who was it that you spoke to?"

20 "A - The bosun, the purser and the bosun."

21 "Q - They are two separate, the bosun  
22 and the purser?"

23 "A - Yes."

24 "Q - When did you say anything to the  
25 bosun? What date was it and what time of day was it?"



1 "A. - The same, the second day of my  
2 accident. And, the bosun talked with the purser."

3 Page 34, Line 5:

4 "Q - What did you say to the bosun and  
5 what did he say to you?"

6 "A. - I tell him that I fell and I show  
7 him my injured leg. He told me to report to the  
8 purser."

9 "Q - What did you say to the purser?"

10 "A. - I explained to him ---- "

11 "Q - I am not asking what you explained.  
12 I am asking what you said to him."

13 "A. - I told him that I fell."

14 "Q - What did he say to you?"

15 "A. - He sent me to a doctor. But I  
16 don't ---- "

17 "Q - Was that the entire conversation  
18 you had with the purser?"

19 "A. - Yes."

20

21 CROSS-EXAMINATION (Continued)

22 BY MR. REID:

23 Q Mr. Wakim, have you seen the bosun since your acci-  
24 dent?

25 A Have I seen what?

1 Q Have you seen the bosun since your accident?

2 A In the sea, are you speaking while he is on land?

3 THE INTERPRETER: "No" he said.

4 Q Have you seen the bosun's statement?

5 A No.

6 Q Did Mr. Matthews show you the bosun's statement  
7 that I gave to him?

8 A No, he didn't.

9 Q Did Mr. Matthews tell you what the bosun had said  
10 in the statement?

11 MR. MATTHEWS: I hope Mr. Reid isn't trying to  
12 get in some statement from a witness.

13 MR. REID: When I got this case, Your Honor,  
14 I went to look for Mr. Lorensen.

15 THE COURT: Didn't you have a deposition of the  
16 bosun?

17 MR. REID: I am trying to explain. I called  
18 his daughter. I had his address here on the crew  
19 list as being living in Mountain Top.

20 THE COURT: You can't find the bosun?

21 MR. REID: He is dead, Your Honor. He died in  
22 1970 before we could get a hold of him and take his  
23 deposition.

24 THE COURT: Is the statement admissible of a  
25 dead man?



1 MR. REID: I have a statement here, Your  
2 Honor, which is diametrically opposed to what the  
3 Plaintiff testifies to.

4 THE COURT: I won't consider that. If you  
5 have any legal authority that says it is admissible,  
6 I will consider it. Is that your case?

7 MR. MATTHEWS: I have some exhibits I would  
8 like to go in.

9 THE COURT: All your exhibits are admitted.  
10 You may step down.

11 MR. MATTHEWS: Your Honor, could I have back  
12 my deposition? I was trying to look over Mr. Reid's  
13 shoulder. I would like to look at it for a second  
14 to see whether there is anything I would want to  
15 read.

16 THE COURT: The interpreter can leave.

17 MR. AWAD: Thank you.

18 THE COURT: We will hear from the mate.  
19 Then if you want to reopen your case, Mr. Matthews,  
20 I will let you do it.

21 MR. MATTHEWS: All right. Thank you, Your  
22 Honor. I will be glancing at this in the meantime.

23  
24  
25

CLARK SHEEHAN

was thereupon produced as a witness in behalf of the defendant, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q Do you know Mr. Wakim?

A Yes, sir.

Q Did you call him while he was on watch on the night he claims he was hurt?

A Yes, sir.

Q What did you tell him?

A I told him to come to the bridge, the weather was bad.

Q What did he say?

A I can't recall him saying anything; but he did show up on the bridge.

Q Did you see him later that evening?

A Yes.

Q Did he tell you he had slipped and fallen on some oil or grease?

A No, sir.

Q When was the first time you learned he had fallen?



1 A I never knew about it until I was contacted this  
2 year by the lawyer.

3 Q This year?

4 A This year.

5 Q In other words, were you on the vessel at the time  
6 he was taken off the vessel?

7 A Yes, sir.

8 Q Approximately how often did you see him after the  
9 date he had allegedly fallen?

10 A Well, he was on my watch.

11 Q Did he have any difficulty carrying out the duties  
12 of his work?

13 A The only thing I can remember is he didn't work  
14 overtime, other than that, he carried out his normal duties.

15 Q Did you know he had been beaten up?

16 A Yes, sir.

17 Q Did he talk to you about it?

18 A He had to -- to be truthful, he may have mentioned  
19 it; but I found out about it through scuttlebutt from the  
20 crew.

21 Q Could you see any marks on his face or body that  
22 indicated he had been beaten up by some thugs?

23 A Not that I can remember.

24 Q But you were there every day until he left the vessel  
25 and you never learned that he had fallen on the ship?

1 A No, sir.

2 Q When Mr. Wakim wanted something, was he able to make  
3 his wants known by signs and other motion or language?

4 A Yes, by methods we got, we were able to understand  
5 each other.

6 Q How did you talk to him?

7 A I omitted all my verbs.

8 THE COURT: All right. Go ahead.

9

10 DIRECT EXAMINATION

11 BY MR. REID:

12 Q Now, what was the weather on sailing from Viet Nam?

13 A The wind was picking up; and, it was coming out of  
14 the northerly direction; and, it really wasn't really  
15 apparent until we started getting out of the harbor, you  
16 know, then you could feel some wind swell. I don't know  
17 of anything else, whether it was raining or not; I don't  
18 remember. I do know the wind was picking up pretty brisk.

19 Q Did you make a logbook entry on that day in your  
20 book?

21 A Yes.

22 THE COURT: How is that going to prove or  
23 disprove any issue in this case?

24 MR. REID: I am just asking him, Your Honor.

25 THE COURT: I don't care how many questions



1                   you ask. I want to know what the relevancy is.

2                   MR. REID: To show the vessel was rolling.

3                   THE COURT: How would that help you?

4                   MR. REID: This man here could just as well  
5 have fallen from the roll of the vessel.

6                   THE COURT: I thought it is your contention  
7 he didn't fall at all, he was beaten up?

8                   MR. REID: I have to argue in the alternative,  
9 Your Honor.

10                  THE COURT: Did you or any member, say the  
11 bosun or purser, make any report of the accident that  
12 he is alleged to have happened on that evening?

13 A. I didn't make any.

14                  THE COURT: Do the logs of the vessel show  
15 that he fell on that evening?

16 A. No, sir.

17                  THE COURT: Anything further?

18 Q (By Mr. Reid) What is the procedure when you were  
19 on watch from, say midnight to 8:00 o'clock, concerning  
20 any report of any accident, sir?

21 A. The usual procedure is if anybody gets hurt, then  
22 they report it to the mate on watch. Then he in turn,  
23 will ask the man if he is able to stand his watch, if he  
24 feels he is able. If he is not, then the mate will get  
25 somebody to replace him. He will make a report to the

1 chief mate or the purser and it should be logged in  
2 the medical log.

3 THE COURT: Mr. Matthews.

4  
5 CROSS-EXAMINATION

6 BY MR. MATTHEWS:

7 Q. What kind of worker was this fellow?

8 A. Good, no problem.

9 MR. MATTHEWS: That's all I have, Your Honor.

10 THE COURT: That's all. Call your next  
11 witness.

12 MR. REID: That's my case, Your Honor.

13 (The Court's remarks following  
14 testimony of Mr. Sheehan has  
15 been previously transcribed and  
16 is contained in the transcript  
17 of testimony previously filed  
18 in this case.)

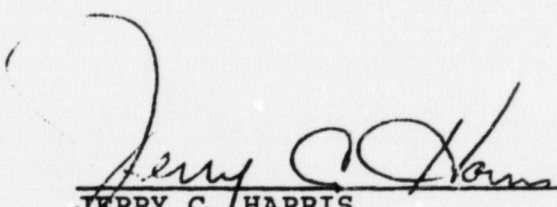
19  
20 \* \* \*  
21  
22  
23  
24  
25



1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF OREGON  
3  
4

5 I, the undersigned, Jerry C. Harris, an  
6 Official Reporter of the United States District Court  
7 for the District of Oregon, do hereby certify that I  
8 reported in Stenotyping the proceedings occurring in  
9 the transcript appended hereto; that I thereafter caused  
10 my Stenotype notes, so taken, to be reduced to typewriting  
11 under my direction; and that the foregoing and hereto-  
12 attached pages of typewritten matter, numbered 1 to 83,  
13 both inclusive, constitutes a full, true and accurate  
14 record of said proceedings so reported by me in Stenotyping  
15 as aforesaid.

16 Dated at Portland, Oregon, on this 28<sup>th</sup>  
17 day of April, 1975.  
18  
19

20  
21   
22 JERRY C. HARRIS  
23 Official Reporter  
24  
25

Irvin Balensweig, M. D.  
Howard D. Balensweig, M. D.  
667 Madison Avenue  
New York, N. Y. 10021

October 29, 1970

Zock, Petrie, Sheneman and Reid, Esqs.  
19 Rector Street  
New York, N.Y. 10006

Attention: Edwin K. Reid, Esq.

Re: LONNA WAKIM  
Occ: O.S.  
Date of Alleged Inj: November 26, 1969  
Name of vessel: Unknown  
OUR FILE #27961

Gentlemen:

The above was examined in this office on October 28, 1970 in the presence of an interpreter by the name of Mr. M. Raad.

History. All information was obtained through interpreter. This was the first trip that this patient made on a vessel going to sea. That he fell down on the ship. That when he fell he hurt the whole left side of his anatomy to include the head, the arm, the chest, the left lateral back, left lateral abdomen and the entire left leg. That he continued working for about 3 or 4 days and was then taken off the vessel when the vessel arrived in a Port in Okinawa. He was flown to the United States arriving in New York. Shortly thereafter he went to the Marine Hospital at Staten Island and he was both an Inpatient and Outpatient. The last time he visited the Clinic was about a month ago but he is to return November 3, for evaluation. It is stated that he is no better all this time.

Past history. Previous injuries to the above areas, denied.

Present complaints. He has pain throughout the left side of his body. He gets dizzy once in awhile.

Examination. It is stated that he is 5 foot 9 inches tall. That he weighs 145 pounds and is 39 years old.

Patient removes all clothing normally under observation. He is not wearing any external support.

With patient standing, he was requested to close his eyes. No Romberg. No ataxia of upper extremities.



Irvin Balensweig, M. D.  
Howard D. Balensweig, M. D.  
667 Madison Avenue  
New York, N. Y. 10021

Re: Hanna Wakim

-2-

October 29, 1970

Eyes are brown. Pupils react normally. No facial muscle weakness. Tongue protrudes in midline.

Neck. No defects. No neck masses. No muscle spasm. It is stated that if he were to move his neck fast he would get dizzy. Showed no signs of dizziness in this office. Moved his neck quite normally.

Upper extremities. No atrophies. No circulatory changes. No defects of motion of any of the joints of either upper extremity. NO complaints.

There are no points of tenderness throughout the shoulder regions or elsewhere with reference to the upper extremities.

Test for grasping power. This is purely subjective even though we use an apparatus. He is left handed. Right reading 70, left 40 performed very tensely. No complaints. Using the larger apparatus. Right 40, left 10 again performed very tensely. This is not necessary.

Further neurological examination. Vibration sense normal, head, clavicles, bony prominences of hands. Sensation is stated to be diminished. Left side of face, left side of neck, left upper chest, left upper extremity all without pattern.

Reflexes of upper extremities are normal and there are no abnormal reflexes.

Measurements of upper extremities.

Circumference of upper mid arms.

Upper forearms

Hands.

His is left handed and the readings are normal.

R 10" L 10 1/2"  
R 9 3/4" L 10"  
R 8 1/4" L 8 5/8"

Trunk. Old healed scar along the back of the right upper chest wall. Unrelated. There is no loss of the lumbar curve. There is no deformity of the trunk.

Movements of trunk are performed a bit slowly through normal ranges without complaints of pain but with statement that he gets dizzy. He shows no signs of any dizziness. He bends forward until finger tips reach within 12 1/2 inches of the floor without muscle spasm and with range of trunk motion of 50°. Extension 20°. Side bending to right 30°. Side bending to left 30°.

With patient sitting. Finger to toe, heel to knee and Flip tests are carried out slowly through full ranges without complaints of any pain but with statement that he gets a little dizzy. And then added that when performing the left Flip test he felt something in his left leg but could not define it. And then stated he had some pain

Irvin Balensweig, M. D.  
Howard D. Balensweig, M. D.  
667 Madison Avenue  
New York, N. Y. 10021

Re: Hanna Wakim

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October 29, 1970

through the interpreter. Gets off the chair without any difficulty.

Posture is normal.

Gait. Has no difficulty walking. He walks slowly and suddenly he starts to sort of pull his left leg stating that his whole left leg hurts and that he has pain all through the left side of his body. When walking on his knees he does the same and complains that something slips around his left knee and he doesn't have any power pointing to his left leg. Walks slowly on his heels again taking a few steps with complaint of stiffness of the left leg and loss of power. He shows no signs of any instability or weaknesses.

Balances weight slowly through full ranges stating that there is pain and he points to the back of the left knee.

Squats slowly through full range and does not have any difficulty arising from the squat position stating he has some pain all throughout the left leg and in back of the left knee.

Supine position is assumed without difficulty and he lies perfectly flat on his back. Abdomen negative. No hernias.

Prone position assumed slowly. No muscle guarding. When prone there are no points of trunk nor of lower extremity tenderness. Knee flexion and psoas spasm tests through full ranges without complaint of any pain in his back. There is no demonstrable weakness of the gluteal muscles and no muscle atonies throughout the lower extremities.

Lower extremities. There are no circulatory changes. Cannot determine whether this patient has any local weaknesses of any of the muscles of the left lower extremity because he will not resist any of the testings. And actively he now moves his left leg very cautiously through limited range, however, passively there are no defects. No points of tenderness. No fluid within the left knee. No instability of the left knee. No crepitation. Even when prone there is no popliteal fullness.

Special leg tests. This patient permits of straight leg raising through a range of 60° bilaterally without complaint. Kernig, Patrick and Lasegue tests are permitted through full ranges and without complaint.

Measurements of lower extremities.  
Length from umbilicus to malleoli equal 38".  
Circumference of thighs equal 13".  
Circumference of calves equal 12 1/2".



Irvin Balensweig, M. D.  
Howard D. Balensweig, M. D.  
667 Madison Avenue  
New York, N. Y. 10021

Re: Hanna Wakim

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October 29, 1970

Further neurological examination. Sensation is normal with reference to the skin of the abdomen. There is complaint of diminished sensation of the skin covering the left leg. Vibration sense is stated to be diminished over the left tibia. Right knee jerk normally obtained. Had difficulty obtaining the left knee reflex. Right ankle jerk easily obtained. A little difficulty obtaining the left one.

X-rays were taken by this examiner October 28, 1970, films #27961. With the patient standing a lateral view of the cervical spine. There are no evidences of trauma. With the patient in the supine position an anteroposterior view of the lumbar spine to include the pelvis and the lower 2 or 3 vertebrae and the lower 3 ribs. No findings of trauma.

A Lateral view of the same area. No findings of any trauma. An anteroposterior view of the both knees and a lateral view of the left one. No findings of trauma.

This examiner's opinion. I cannot detect any evidences of trauma. This is not an instance of hysteria. The skin covering the left half of the abdomen is not involved in any sensory changes even though there is diminished sensation alleged to be present with reference to the left side of the face, the neck, the chest, and both upper and lower extremities on the left. In hysteria there is a uniform pattern throughout the left side. I did have some difficulty obtaining the left knee and ankle reflex. I cannot evaluate the significance of this in view of the absence of any other findings. I would therefore suggest that an attempt be made to obtain all available records in this patient's problem to include the ship's log, any medical attention he received in a foreign port and records with reference to his hospitalization and Clinic care at Staten Island. I don't know whether he visited the West Houston Clinic or not. That information I could not obtain.

After reviewing such information I might recommend a neurological evaluation together with an electroencephalogram. At the moment I see no need for such further investigation.

Fitness for duty. Normally this man would be found fit for duty. However, in view of his numerous complaints to include dizziness and his reluctance on examination, I would withhold an opinion until I have had occasion to review records.

Treatment. I see no indication for treatment.

Remarks. Towards the middle of the examination with the patient

Irvin Balensweig, M. D.  
Howard D. Balensweig, M. D.  
667 Madison Avenue  
New York, N. Y. 10021

Re: Hanna Wakim

-5-

October 29, 1970

standing I took his blood pressure using the left upper extremity and the reading was 150/90. This is sort of a borderline hypertension. Pulse 120 per minute. I listened to his heart and lungs and could not detect any findings.

I will send you a further report upon receipt of additional information.

X-rays will be kept in my file.

Very truly yours,

*J. Balensweig*  
J. Balensweig, M.D.

IB:fw



NSA.

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Page 1

**INVESTIGATING OFFICER'S REPORT ON ACCIDENT/ILLNESS**  
This work form should be compiled and turned in to Purser immediately after accident or illness

Name of Injured Hanna B. Wakim Capacity: O.S.  
Address 9201 Shore Rd., Brooklyn, N.Y. Z or SSA # Z 1306757  
Vessel SS SIOUX FALLS VICTORY Voyage NSA 15 Date of Accident/Illness 10-14-69 Hour 2330  
At sea no Port and Dock Anchorage, Colon Bay, Exact location of accident Shopping area, Cristobal,  
Panama Canal Zone Panama Canal Zone  
Injured/illness on duty No What doing Off duty Whose orders \_\_\_\_\_

**STATEMENT OF INJURED**

(4) I was walking on sidewalk when I was attacked by three men one from back and one from each side. The one from back tried to strangle me. They dragged me into a dark alley. I fell to the ground and passed out from the beating. They took my watch, \$80.00 cash, wallet with all papers. I later sought help in liquor store, close by, and they called the police. The police came and I went with them, later a Detective took me to Police Station.

Taken by \_\_\_\_\_ Signature Injured \_\_\_\_\_

(2) ~~INVESTIGATING OFFICER'S REPORT IN DETAIL OF ACCIDENT OR ONSET OF ILLNESS~~

Statement of injured: cont'd--- I made a statement there. While I was still at the station, the police brought in the three men who had attacked me and they were taken in custody in jail. I asked the Police why they didn't return my watch, money, wallet and papers. The Police said that tomorrow when the Chief comes in they would try to return the stolen goods. I stayed all night in the Police Station. Next day the Chief came in and two men from Ship's Agent, Boyd Bros., they said that when they found the stolen articles, they would turn them over to the Agent to be mailed to me. The Agent drove me to the launch and accompanied me back to the ship. While the Agent was aboard, the Captain asked me if I wanted to stay in Cristobal and wait for papers and go to doctor for treatment. I told him I would stay on the ship. About ten days later, I spit blood up one time. I was sore around the neck and in both arms from shoulder to fingers.

Statement typed by H.A. Tidwell, Purser

H. Wakim

PERSONAL

From your investigation do you know Where, when, how and why accident/injury occurred or full facts of onset of illness, if not

Signature

Title

Names of Co-Workers	Name	Address
(Co-worker may or may not be a witness depending on whether actually observed accident.)	None	
Names of Witnesses	None	
(Witness is person who actually observes an accident.)		

IMPORTANT: ALL WITNESSES' STATEMENTS SHOULD BE OBTAINED IMMEDIATELY.

1153A

(2) (continued) **INVESTIGATING OFFICER'S REPORT ON ACCIDENT/ILLNESS**  
 This work form should be compiled and turned in to Purser immediately after accident or illness

Name of Injured Hanna B. Wakim Capacity: O.S.  
 Address \_\_\_\_\_ Z or SSA # \_\_\_\_\_  
 Vessel \_\_\_\_\_ Voyage \_\_\_\_\_ Date of Accident/Illness \_\_\_\_\_ Hour \_\_\_\_\_  
 At sea \_\_\_\_\_ Port and Dock \_\_\_\_\_ Exact location of accident \_\_\_\_\_  
 Injured/Illness on duty \_\_\_\_\_ What doing \_\_\_\_\_ Whose orders \_\_\_\_\_

(4) **STATEMENT OF INJURED**

*[Handwritten signature]*  
 ALASKA  
 PERSONNEL CLAIM AGENT

Taken by \_\_\_\_\_ Signature Injured \_\_\_\_\_

(2) INVESTIGATING OFFICER'S REPORT IN DETAIL OF ACCIDENT OR ONSET OF ILLNESS:  
Seaman is only person on vessel having knowledge of incident.  
Seaman indicated that a report and statement was made at the Police Station, Cristobal.  
Boyd Bros, Ship's Agent, was summoned to Police Station for assistance, and to accompany  
Seaman back to vessel.  
Wakim complained of nausea, after leaving Panama Canal. He was given Marezine, as  
ship was rolling heavily. He had previously been nauseous after vessel departed from  
Wilmington, N.C., due to vessel rolling heavily and at that time he was issued Dramamine.  
Later, he indicated that he spit up blood one time, but that was all. He later complained  
of pain in neck area and arms and was given APC's, but they did not agree with him.  
Wakim stood all his watches and performed work on overtime along with his watch  
partners. No time was lost from work.  
On arrival CamRanh Bay, RVN, Wakim was issued Mast. Certificate, U.S. Army Dispensary  
and was taken there by Agent, LAM Bros. He returned to vessel, having been given (1) Non-  
avitamins and (2) Robaxin 500mg. by Dr. Chensam. No Doctor's report was made on copies  
of Mast. Certificate, provided for that purpose.

From your investigation do you know? Where, when, how and why accident/injury occurred or full facts of onset of illness, if not

W. A. Fitchell Signature Title Purser

Names of Co-Workers (Co-worker may or may not be a witness depending on whether actually observed accident.)	Name	Address
Names of Witnesses (Witness is person who actually observes an accident.)		



FORM MA-570  
(10-65)UNITED STATES DEPARTMENT OF COMMERCE  
MARITIME ADMINISTRATION - SHIPOWNERALASKA STEAMSHIP CO., GEN AGENT  
MASTER'S CERTIFICATE

AND

REQUISITION FOR AND REPORT OF MEDICAL ATTENTION

DATE

12-4-69

TO (U.S.P.H.S. Station)

TO (Name of Doctor and Port)

Family Clinic

Highway 5, Awase Commercial Area  
Okinawa

## Section A

The bearer, Hanna B. WAKIM, Z- 1306757 has been employed aboard the American-  
flag SS SIoux FALLS VICTORY from 10-4-69 to Present date in the  
capacity of O.S. He complains of the following symptoms for which he requests treat-  
ment: Pains in neck and both arms as result of being attacked and robbed in Cristobal,  
Panama Canala Zone, 10-14-69. \*\*\* Also: Immunization shots: Cholera, Typhus,  
and Plague

Examined in Cam Ranh Bay, 11-17-69. Was given: Nonavitamins (one per day)  
and Robaxin 500mg. - 2 tablets four times daily.

The patient says they originated as follows: (Patient must describe onset of illness and/or circumstances of in-  
jury in his own handwriting - including date, exact place of occurrence, and the cause thereof.)

Pains in neck and both arms as result of being attacked and robbed in Cristobal,  
Panama Can. Zone, 10-14-69.

(Master's signature)

ALASKA STEAMSHIP CO., Flot 42

I have read the above and verify it to be the truth. In order for Seattle, Wn. 98134, General Agent for the U.S. Department of Commerce, Maritime Administration,  
owner, to be informed of my medical condition, I authorize the doctor and/or hospital upon request to make available  
to their representative for examination and/or photostating all clinical records, reports, diagnosis, pertinent to or in-  
volving, the injury or illness for which I receive treatment under the authorization of this Master's Certificate. The  
cost of photostating will be paid by my employer's representative.

Distribution at U.S. ports.

Original to seaman. 1 copy to  
General Agent's claims depart-  
ment with master's report of  
illness or injury.

(Seaman's signature)

## FOR OVERSEAS USE ONLY

## Section B - DOCTOR'S REPORT

Findings and Diagnosis: (This man has been examined more or less completely  
including chest X-ray, X-ray of cervical spine, complete blood counts  
and urinalysis. No abnormal finding noted. However, he has been losing  
weight from 150 to 133 lbs for no apparent reason, and his arms have been  
losing power and getting smaller (?). He has a history of being badly  
mauled and almost strangled as stated above.

Treatment provided: B-12 and B-comb i.m.

Status and Recommendations: Fit for Duty - Not Fit for Duty - Until Recommendation for  
further examination including neurologic. Fit to travel by air.

RECEIVED  
 ALL VD, ACUTE ALCOHOLISM, DRUG CASES  
 AND DENTAL WORK OTHER THAN EXTRACTATIONS  
 ARE FOR THE ACCOUNT OF THE PATIENT.

J. P. Javier, MD  
 (Doctor's signature)

## Distribution at foreign ports:

- 1 copy to master before sailing.
- 1 copy to foreign agent (include with account for reimbursement).
- 1 copy to General Agent's claims department (home office) with master's report of illness or injury.
- 1 copy to attending doctor's records.



PLAINTIFF

94

EXHIBIT  
U. S. DIST. COURT  
S. D. N. Y.

5- *id*

January 8, 1970

Alaska Steamship Company  
Pier 42  
Seattle, Washington 98134

Re: Hanna B. Wakim  
SS SIOUX FALLS VICTORY  
date of accident: 12/4/69  
Maritime Administration

Gentlemen:

This is to advise you that we have been retained by the above named seaman to prosecute a claim for injuries sustained by him when employed as an ordinary seaman, 12-4 watch, on your vessel, the SS SIOUX FALLS VICTORY.

We are acquainted with the fact that this a government agency vessel under the Maritime Administration.

Our client states that he suffered injury to his head, back, both legs and left arm when he was caused to slip and fall on andoil spill in the vicinity of the No. 3 hatch, which said spill came from the winch nearby. Our client further advises us that he received a call from the third mate to come off look-out and report to the bridge due to expected bad weather conditions.

Our client did slip and hit the deck with his back and head. He remained with the vessel until Naha, Okinawa, when he was taken off duty and flown home.

Our client reached the States some time after December 5, 1969 and has been treated by the U.S. Public Health Service Hospital, Staten Island, New York. I enclose herein duty status certificates dated December 8, 1969 and one dated December 23, 1969, the later indicating that he is to return March 3, 1970 for further medical care.

Alaska Steamship Company

-2-

January 8, 1970

We would appreciate your forwarding maintenance covering the period December 5, 1969 through date and running through March 3, 1970. As the vessel has not yet paid off, we request that you pay our client unearned wages to the end of the voyage from December 4, 1969 when he left the ship.

As maintenance is the important question at this time, we would appreciate your forwarding a check to us for the amount due and on which of course we waive any fee so that the check may be made payable directly to our client.

We trust we shall have the opportunity to communicate with you when our client shall have reached fit for duty status, and perhaps we can arrive at an amicable adjustment of this matter. In the event that you have an agency in New York to handle this matter, and if this would be more convenient to deal with them here, please advise us.

Yours very truly,

E. HIRSCHBERGER

EH:sl  
Enclosure



EXHIBIT  
U. S. DIST. COURT  
S. D. OF N. Y.

KLEIN AND STERLING  
PROCTORS IN ADMIRALTY  
COUNSELORS AT LAW  
FORMERLY KNOWN AS  
"KLEIN AND HIRSCHBERGER"

March 11, 1970

15 PARK ROW  
OPPOSITE CITY HALL  
NEW YORK, N. Y. 10038  
SUITE 1635  
227-3787

Seaman's Claim Pursuant  
to NSA Order No. 67

United States Department of Commerce  
Maritime Administration  
Washington, D.C. 20235

Gentlemen:

Please be advised that this office has been retained by Mr. Hanna B. Wakim to prosecute claims arising out of personal injuries sustained by him aboard the SS SIOUX FALLS VICTORY on November 26, 1969. Accordingly, we present the following for your examination, consideration and allowance or disallowance of such a claim:

1. The name of the vessel on which the claimant was serving at the time that the claim arose was the SS SIOUX FALLS VICTORY.
2. Seaman's name: Hanna B. Wakim.
3. Certificate or identification No.: Z#1306757.
4. Mail address: c/o Julius Abraham, 9201 Shore Road, Brooklyn, New York.
5. Legal residence: same as above.
6. Date of birth: August 15, 1931.
7. Place of birth: Lebanon.
8. Cause of claim occurred on November 26, 1969.
9. The facts and circumstances leading up to and surrounding the event out of which such claim arose:

Plaintiff, who was on lookout watch was called by the third mate to report to the bridge due to bad weather expectations. He proceeded from the bow on the port side to the house, and as he

United States Department of Commerce

-2-

March 11, 1970

passed No. 3 hatch he was caused to slip on an oil spill which came from a leak from one of the winches in the vicinity. As he slipped he fell to the deck injuring his back, and his head struck the deck. This occurrence took place at approximately 1:30 A.M. The ship was running at sea and there were no lights in the area.

10. As a result of the foregoing, said claimant hereby makes claim against the United States through the office of the National Shipping Authority, Maritime Administration or successor office in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

11. We attach hereto copies of the following medical reports of duty status relating to claimant:

duty status certificate dated December 8, 1969;  
duty status certificate dated December 23, 1969;  
duty status certificate dated January 19, 1970; noting that he was again examined on March 3, 1970 and is not fit for duty.

12. We attach hereto authorization by claimant to permit the Maritime Administration to obtain the following data:

Medical records of the United States Public Health Service Hospital Stapleton, Staten Island, New York.

This administrative claim is being made pursuant to the applicable rules and regulations and NSA Order No. 67.

Very truly yours,

KLEIN and STERLING

By \_\_\_\_\_  
BENJAMIN B. STERLING

MC:sw  
Enclosures  
CC: Alaska Steamship Company  
Pier 42  
Seattle, Washington 98134  
\*Registered Mail-RRR



MEMORANDUM FOR THE COURT

RE: WAKIM v. USA

January 2, 1975

Zock, Petrie, Reid, Curtin & Byrnes, Esqs.  
19 Rector St.  
New York, N. Y. 10006

Re: Wakim v. USA

Gentlemen:

I hand you herewith posttrial memorandum and medical records, parts of which I have underlined in red.

When you have completed your answering brief, I would appreciate your returning the medical records to me so that I may consider any rebuttal. I will then transmit them to the Court together with such other exhibits which are in my possession.

Very truly yours,

PCM/gd  
Enc.

## ZOCK, PETRIE, REID, CURTIN &amp; BYRNES

19 RECTOR STREET  
NEW YORK 10006

January 22, 1975

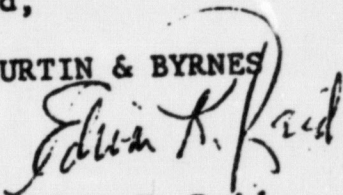
ANTHONY N. ZOCK  
SHERMAN V. PETRIE, JR.  
EDWIN K. REID  
PHILIP J. CURTIN  
GEORGE D. BYRNES  
CHARLES E. DUROSSCABLE ADDRESS  
TOPSIDE  
TELEX 421522  
TELEPHONE  
(212) 944-8766The Honorable Gus J. Solomon  
United States District Judge  
District of Oregon  
Portland, OregonRe: Hanna B. Wakim v. United States  
of America - 70 Civ. 2848 (SDNY)  
Our File No. 5935

Dear Judge Solomon:

Enclosed herewith is the original and a copy  
of the defendant's post trial reply brief.  
We are sending a copy of the brief to Mr.  
Paul C. Matthews, plaintiff's attorney, and  
Exhibit A, the Marine Hospital's records,  
which he was good enough to loan to us.

Respectfully submitted,

ZOCK, PETRIE, REID, CURTIN &amp; BYRNES

  
Edwin K. ReidEKR:jb  
Enclosures

cc: Paul C. Matthews, Esq.



WAMINGTON A. H. HONOR

WAL TA HOLLAND

WILLIAM A. H. HONOR

WAMINGTON A. H. HONOR

WAMINGTON

January 3, 1975

615- The Honorable Gus J. Solomon  
U. S. District Judge  
U. S. District Court, Dist. of Oregon  
607 E, United States Court House  
Portland, Oregon 97205

Re: Wakim v. U. S. A.  
70 Civ. 2848

Honorable Sir:

Enclosed herewith is original "Plaintiff's Post-Trial Brief"  
in the above matter.

Respectfully yours,

gd  
Enc.

Paul C. Matthews, Attorney at Law, 11 Broadway, New York 10004  
212 344-1936

PAUL C. MATTHEWS  
ATTORNEY AT LAW  
11 BROADWAY  
NEW YORK, N.Y. 10004

MAIL ROOM  
RECEIVED  
JAN 29 1975  
U.S. DISTRICT COURT  
PORTLAND, OREGON

January 28, 1975

The Honorable Gus J. Solomon  
U. S. District Judge  
Chambers  
U. S. District Court  
District of Oregon  
Portland, Ore. 97205

Re: Wakim v. USA  
70 Civ. 2848

Dear Judge Solomon:

I received in the mail your decision in the above, and I am at a loss to know how to proceed. At the conclusion of the trial, your Honor had suggested that I prepare a brief and that Mr. Reid prepare an answering brief within two weeks, and that I would then have a week in which to reply. Your Honor suggested that I keep the exhibits and then submit them to you with the brief.

I have now prepared a reply brief which is enclosed, and I have indexed and underlined various exhibits which I have in my possession. Your Honor has arrived at a decision without considering these exhibits. Please notify me if I am to deliver these exhibits to you or whether I should simply retain them.

Respectfully yours,

/s/ Paul C. Matthews

PCM/gd

cc: Zock Petrie Reid Curtin & Byrnes, Esqs.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

HANNA WAKIM,

Plaintiff,

70 Civ. 2848

- against -

Judge Solomon

UNITED STATES OF AMERICA,

Defendant.

- - - - - X

REPLY BRIEF OF PLAINTIFF

1. Factual Matters

In this brief plaintiff will make no effort to make rejoinder to immaterial factual allegations set forth in defendant's brief where plaintiff's counsel has to rely on his memory processes as opposed to those of defendant's counsel. Neither will there be any attempt to rehash arguments already set forth in plaintiff's posttrial brief. However, certain factual matters can be stated with reasonable certainty. They are:

(1) Plaintiff does not claim that he went to the crew mess immediately after the accident and reported his accident immediately to the bosun.

(2) Plaintiff was not asked in his pretrial testimony whether he had had any conversations about his accident with Williams or other crewmembers. Furthermore, the

observations made by Williams as to the condition of plaintiff and his clothing immediately after the accident were just that--observations, and not conversations.

(3) Plaintiff's counsel knows of no testimony that the ship was shipping seas on her bow; plaintiff was recalled by the mate on watch because rough weather was anticipated.

(4) The witnesses who testified to recalling no oil spill on the deck were both engineers and would have no reason to be out on deck. The job of cleaning up an oil spill on the deck is a deck department job. The mate Vulliamy testified that he recalled no oil spill while the vessel was in Vietnam. He gave no testimony concerning the condition of the decks after the vessel left Vietnam.

## 2. Dr. Balensweig's Claim of Improper Treatment by the Public Health Service.

Assuming arguendo Dr. Balensweig's diagnosis of a conversion reaction to be correct, then it is undisputed that it was negligence for the doctors at the Public Health Service to perform the spinal fusion from which plaintiff is now permanently disabled. But this argument does not enable the defendant to escape liability. Plaintiff's treatment at the Public Health Service was in consequence of a condition arising out of his employment on board the



SIOUX FALLS VICTORY, and therefore the shipowner owed a duty to furnish medical care. The Iroquois, 194 U.S. 240, 247. Civilian shipowners have been held liable for the negligence of civilian doctors. Central SS Corp. v. Sumbula, 405 F2d 291. They have also been held liable for the negligence of government doctors. Fitzgerald v. A. L. Burbank, 451 F2d 670.

The foregoing decisions were based upon the theory of agency, since the doctors were not employees of the shipowner. In Wakim's case, the doctors of the Public Health Service at Staten Island were employees of the defendant United States of America, and the government is responsible for their negligence on the principle of respondent superior.

### 3. Counsel Fees

Defendant seeks to avoid responsibility for counsel fees and expenses arising out of the refusal to pay plaintiff maintenance by the weak assertion that the complete records of the marine hospital were not made available by plaintiff until the evening before trial.<sup>1</sup> Counsel for

1. Perhaps defense counsel is confused by the fact that plaintiff's medical records were loaned to him on several occasions. He last returned the records to plaintiff's counsel on October 8, 1974, (see enclosed letter) but he had previously borrowed and returned these same records back in July, 1974. (See enclosed letter of July 16, 1974.)

Wakim

plaintiff states unequivocally that at no time did he refuse to make medical records available to defendant's counsel; at no time did he refuse to provide authorizations; and in any event the medical records were always available to counsel for the United States either by service of a subpoena or by simply requesting them. Furthermore, the Court's attention is again called to plaintiff's counsel's letters of June 11, 1973 and February 21, 1974 to defendant's counsel (Exhibit 7). The letter of June 11, 1973 states as follows:

"I previously forwarded report of duty status and narrative summary covering Mr. Wakim's latest hospitalization at the USPHS Hospital, Staten Island, from April 23, 1973 to June 4, 1973. You will note that he appears to be suffering from a herniated disc as a result of his injury on the SIOUX FALLS VICTORY.

"I have spoken with you in the past concerning payment of maintenance to Mr. Wakim, and you have stated that you were refusing to pay this on the grounds that the man was a malingerer and had no real disability. I am wondering whether or not this latest report may not cause you to change your mind.

"Please let me know whether you will recommend payment of this maintenance, otherwise it is my intention to make application to the court in this regard."

The letter of February 21, 1974 enclosed a later clinical abstract from the marine hospital and again demanded maintenance.

The duty of a vessel owner to furnish maintenance



and care is a humanitarian duty. In determining questions involving maintenance, all ambiguities or doubts are to be resolved in favor of the seaman. The defendant must show continuing evidence in good faith in dealing with a seaman requesting maintenance. The burden is on the shipowner to demonstrate such good faith. Vaughan v. Atkinson, 369 U.S. 527. Defendant's lame explanation is no lawful excuse. The truth is that defendant chose to stand by its previously expressed position that plaintiff was a malingerer, a claim not based on fact. It must now pay the penalty.

#### CONCLUSION

Judgment should enter in favor of the plaintiff for damages, maintenance and counsel fees.

Respectfully submitted,

PAUL C. MATTHEWS  
Attorney for Plaintiff  
Office and P.O. Address  
11 Broadway  
New York, N. Y. 10004

## OUTPATIENT NOTES

## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

12/4/69

Leah Clinic

Pt. attacked on 14 Oct. by several men. '10 neck (of the back) + arms pain. Took a cruise right after. Not seen by MD. 5 days after attack, slipped while going to lookout + injured (at) neck + upper back. Then '10 increasing weakness + episode of apparent hemiparesis 2 weeks later. None said. Because of '10 extreme weakness, pt saw a doctor on Okunawa + was referred here.

PE, 140/80 80, reg

PERRA - Fundi normal - Eom full.

Chest + Cor = wnc Abd = neg.

Neuro DTR's symmetrical +

CRANIAL N III OK.

Upper extremities not very strong (pt. says = very weak), but strength = symmetrical.

Imp. Weakness (subjectively)

? etiol (good chance = psychogenic)

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name last, first, middle; grade, date; hospital or medical facility)

REGISTER NO.

183430

WARD NO.

WAXIM, HANNA B 17/S

DOB - AUG 15, 1931

9201 SHORE ROAD BRLYN N.Y.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-105



DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

Rec. NTC (Screening) on Monday.

Crumfield

12/8/69, Gen Q 32 yo Arabic (translator present).

- See above note
- No change since above
- Of significance:

- a) Hematocrit <sup>(2 weeks ago)</sup>  $\times 1 - \approx 1$  pint  
bright red blood. No Hx of  
dyspepsia or peptic ulcer.  
Stools have been mainly brown
- b) Pt. remains weak & lethargic
- c) Weight loss  $\approx 12$  lbs. the  
last month.
- d) Still has occasional occipital  
headaches since beating 1 mo ago  
(not knocked unconscious, &  
pt. states x-rays were taken & neg)

PPE BP 120/70, pulse 80

pt appears chronically ill & slightly pale.  
Abd - soft, non-tender, 3 organs  
Rectal - prostate wvl - [Guaiac Neg]

CLINICAL RECORD		DOCTOR'S PROGRESS NOTES (Sign all notes)
DATE		
P.A.W.	<p>ID CBC, U/A, chest film, UGI series, visit            @ Med clinic (2<sup>nd</sup> visit - Mylanta/Tylenol            (probably 10 days) E. L. L. (12/13)</p>	
	<p>G. 2. Series instructions given            Simpson.</p>	
12-13-69	<p>38yo ♂ has been seen here 2x previously.            Hx of head trauma several weeks ago.            Pt still complaining of occipital headaches            (feels like pulling hair -)            Also feels his ⑦ arm + ⑧ leg are  <u>getting weak</u> - over past 2 wks.            Pt on Tylenol + Mylanta only - no            seizures, gaseousness, vertigo</p> <p>PE: P. 90 + reg. - Pt has lack of affect.            Cerebrum: Alert + oriented x 3            Cerebellum: no dysdiadochokinesis - finger to nose            w/ - no bounding            C-V: II - XII intact - Fundi w/ - disc sharp            Sensory: 2 pinprick, lt touch, vibration</p>	

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name--last, first,  
middle; grade; date; hospital or medical facility)

REGISTER NO.

WARD NO.

J 1 4 3 0  
 M. R. J. H. B.  
 F. 1 1 1 1 1 1  
 51 351 46 0750

DOCTOR'S PROGRESS NOTES  
 Standard Form 509  
 509-106



# DOCTOR'S PROGRESS NOTES

(Sign all notes)

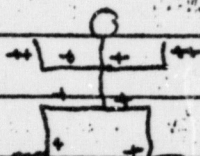
DATE

on entire ① side of body stopping  
exactly at midline.

Position sense remains intact

motor: no Babinski - 1

DTR's



no focal weakness

Impression: ① Tension headache

② Severe defect ① side of body (however  
crosses entire ① side + stops exactly at  
midline). R/O psychogenic problem.

Drugs: ① Plavinal 30 mg # 30 tid

② APC + Cardene # 12

③ Keep med Aggrit -

Hypn

12/17/69 Med

RT still c/o occipital headache  
(through translator) + ↓ strength (L arm +  
L leg). RT is L handed.

RT is above par to hypn  
↓ motor strength L arm + non stereotyped  
↓ pin prick over face.

Drugs: 1) Plavinal - 2) Cardene

3/3

CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
 (Sign all notes)

DATE

12-22-69 Chest film - ? nipple shadow vs. lesion?

PLAN Please read letter to pt. to "come in  
 for repeat chest X-ray, as the  
 first did not turn out well."

HSM sent 12/22/69 E Kennedy MD

12/23/69 Gen

pt upset about neurology appt in March.  
 still having headaches -  
 sensory deficit as above -

Disp: ① repeat chest film  
 ② RTC, wk. follow up chest + 12/24  
 UGI... see Dr Kennedy  
 Hyman.

12/30/69 Gen Cl.

- Too early to get chest film + UGI series.  
 - Still has weakness in ① arm + ① leg  
 - pain in climbing stairs

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first  
 middle; grade; date; hospital or medical facility)

REGISTER NO.

WARD NO.

183 430

Takins, Hannah B.

DOCTOR'S PROGRESS NOTES  
 Standard Form 509  
 509-106



DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE	
1/24/70	Gen Cl
	<u>Headaches</u> - still severe
	<u>Weakness</u> - generalized, but pt. still notes it worse on the @
	<u>Numbness @ arm + @ leg present continuously.</u>
	Pt. and his family very concerned, and have given considerable time to follow-up. They can't be certain about psychosomatic overtones, & note <u>he previously was quite stoic</u>
<u>PE</u>	- neurologic <sup>now</sup> <del>system</del> entirely wnl, including FUNDI, reflexes, strength, & pin-prick
<u>T. test</u>	ID Definite complaints, but no neurologic findings on my exam. EEG normal.
<u>PLAN</u>	Keep Neuro appt 3-3-70 T. Kennedy

CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

3/3/70

Med News

Blinded male

This Japanese immigrant took the 1st ocean voyage in the fall. In Panama he was set upon, knocked out, but was subsequently able to carry out his duties to Cam Ranh Bay where he saw ~~the~~ - On leaving there he was called back from the boat the night they left Cam Ranh - he slipped and fell striking his occiput & foot.

Numbness, tingling, arm, numbness, generalized weakness, blurred vision have persisted since that time. He was seen in Okinawa and air evacuated here - 5 days later vision was unable to perform duties. He feels he has nerve tics and weakness of arm & leg and is 65-70 years old. He states he drops pills on floor frequently - but accompanying translator - in letter

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name last, first, middle; grade; date; hospital or medical facility)

REGISTER NO.

183430

WARD NO.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-106

Wahim, Hanna





Standard Form 509  
Rev. August 1956  
Bureau of the Budget  
Circular A-12

## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

5/24/70 *Theresa King*

6/10/70 *Theresa King* -  
 Rt with injury to head - occurred before  
 before. Discharge from hospital April 1970 -  
 never returned to work. She returned April  
 for re-evaluation. June 22, 1970 -  
 Still having problems - she says she has  
 no visual problems.  
 Her complaint now is weakness of both  
 - problems - especially at night is low - feel  
 like own's color -  
 P.S. - with headache  
 P 84 mg BP 120/80  
 At night - ? Depressed.  
 On NTE - still taking - not  
 quite well - P.E. etc  
 M.R. 30' -  
 1.1  
 Bodyski type  
 Rapid alt motion, large to 100 - re

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first,  
middle; grade; date; hospital or medical facility)

REGISTER NO.

183430

WARD NO.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
109-106

*Wahner, Hanna*



# DOCTOR'S PROGRESS NOTES

(Sign all notes)

DATE

Ponding leg -

Sensation - Transient & frequent -  
varied with each trial

Strength - Rt. Left Hand

Balance - gross @ hand -

T - Rt. Hand down

D - Keep hand. Right Cl/2/2

MFO

JAN 22 1972

MED CLINIC

Wayne

Patient through interpreter continues to complain of numbness & weakness of L arm more than R leg which is accentuated at night. He also complains of intermittent occipital & frontal HAs which are not incapacitating if understood correctly. He also complains of difficulty sleeping which seems to be associated with the hyperesthesia & paresthesias of L body.

On exam - Cranial N II - XII are intact. On examining sensation light touch is preserved bilaterally. There is a variable response to pin

CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

prick, at times patient indicates R stimulus stronger than L but this is variable over the upper & lower extremities. Pinprick sensation is indicated as equal.

Motor - tone is good. Shoulder elevation equal strength. Cooperation throughout remainder of exam is variable but felt to be equal bilaterally. Coordination good equally with equal foot tapping, finger to thumb & RMMs. No Romberg sign. No drift. DTRs are 1+ & equal throughout. There are no pathologic reflexes.

Imp. No neurologic deficit is objectively demonstrated.

Disp 1) ASA 0/6 g. 4h - per Headache  
2) N7FD re complaints of weakness & HA.  
3) RBC 2 mos - spec if nec.  
V. Sigurdson

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle; grade; date; hospital or medical facility)

REGISTER NO.

#3 430.

WARD NO.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-106

Wah... "



DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE  
UG 11-57

Neuro

Findings & lack of same  
discussed with patient. He  
still alleges dreamy spells and  
in some weakness which used to  
be is slightly better.

Drug 1) - ASA 0/6 qth prn - 11/3  
2) KTC 3 times  
3) F.F.D. with patients approval.  
S. S. S.

10/2/70

Gen. Cl. from translator

cc - pain in left knee - has had  
pain since his accident several months  
ago. However pain seems to worsen  
also at night NFFD

Exam: full ROM in knee  
no swelling

Drug altered - doubt any pain  
Drug: NFFD

Analgesic #1

1st anal D. S. S. S.

9/1 J. J. J.

CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

11/2/70 Med Patient tried to go back to work but apparently began feeling pain radiating down lat aspect of thigh to knee with feeling of instability in Lt knee -

On exam -

↓ bending to floor (12-15 inches)  
Indicates tenderness over LSI joint

And there is a 1.5 x 3 cm fibrous feeling mass overlying the joint.

There is an absent LKF (2+ on R)

(No local knee signs)

AF are equal.

Imp - ? H.N.P.

Disg L S Series

Order films for exam - 11/30

NF70

T. Sigurdson

11-30-70 orth

2

Pt has GLR 90° & 5° in 70° left to pain  
weakness of left EHL & foot dorsiflexion

Some numbness only distal aspect of left thigh.

Palpable lump over L5 facet on the left side

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name, last, first, middle; grade; date; hospital or medical facility)

REGISTER NO.

183430

WARD NO.

612

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-100



DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

See weather of the left Bridge to ...  
 Lys 1: ... LS stn  
 R/L HNP L & LS  
 2 = 10 Post concussive syndrome.

Rec 1. Pt consult for diagnosis

2. Rtc 1 week 12/7

3. Phenobarb 3yrs old

4. Bad rest

5. Bad food

NFPP

Stays

DEC 7 1970

DETHO. 0200

2)

Pt claim that pain has not let much  
 the sleep on the floor now  
 electrical studies not done yet

Rec 1. cort found 2

2. Apocaine 2y #3

3. Rtc 4wk 9/1

4. 1st available ortho consult

Stays 7/25

12-31-70

Appt on Dec 11/7/71 changed to 1/18/71 - 1y of

JAN 7 1971

2)

on ch Pt. status from ...  
 present R/L ...  
 Rtc consultant' D. J. ...  
 @Kazapappant

## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

JUN 13 1971  
2)~~exam of~~  
~~patient~~

Cancelled

2-23-71 out office on 8:00 AM. Dr. Williams. Dr. H  
not here - Ret 1/6/71

3/24/71 gen clinic

Pt complaining again of L-S pain -  
already being Rx by Ortho -

Has appt April 5

Disg Keep Ortho appt.  
Heard to look

Hoyman

4-6-71 out

DATE: 4-6-71

CONSULT-DR: DR. Williams

CLINIC: Ortho

FINDING: Dislocated

DISPOSITION:

DUTY STATUS: WFF

HOURS VISE: 7-2-7

APR 27

MORE DATA

Status Good SLR 80(K) 40E  
Disg ① WFF ② 6/7  
② RK Dr. Lee ③ WFF (6)

Roller (continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first,  
middle; grade, date, hospital or medical facility)

REGISTER NO.

183430

WARD NO.

Wakum Hanna

## DOCTOR'S PROGRESS NOTES

Standard Form 500

May-1969 (Rev.)

General Services Admin. &amp;

Int. Agency Comm. on Med. Records

5010-107



DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE 1971

2

~~Pt. to change low back~~  
~~to fall on ship 11/11~~  
~~Mr. State. che SLK~~  
~~the pain down the leg~~  
~~to pain in the (L) hand~~  
~~to find strength.~~

PL Find on low back  
SLK- 70° (L)  
90° R

weak of (L) arm.  
H.L.I.  
Knee of Cardiac Valve  
→ 1 (L) arm  
(2) P.T. at 11:00 AM  
V.T.C-3 weeks W/✓  
P.P. ✓

## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

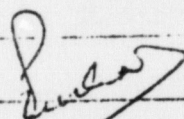
UL 5 372

Patient does not speak English. - This was known  
 from patient interpretation. He was clinical diagnosis a son  
 on 12/10/71. Since then he had myelogram with the  
 normal dye which was negative. Also had x-rays which  
 were normal. He was referred by Social Services & Social  
 Security for which he was not eligible. He is not yet  
 a citizen. He is married. Wife is a citizen. He has no  
 children with this wife. 2 children in Germany with  
 previous marriage. He requested home relief. He is  
 working for his case to be settled. Plans to try and  
 get a store job as a cashier in a Lebanese restaurant.

Still complaining of post-concussion syndrome symptoms  
 and changes. He has not with some left sided numbness  
 which has been suggested which gives a one armful and  
 weakness with use of a cane. A condition, otherwise,  
 remains the same.

1) PNEPD

2) ortho 3-6 mo



7-3-72

Dent - phd - A.D.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give Name, last, first,  
middle, grade, date, hospital or medical facility)

REQUEST NO.

WARD NO.

183 430

Wakim Hannah

DOCTOR'S PROGRESS NOTES

Standard Form 500  
May 1962 (Rev.)General Services Admin. &  
Int. Agency Comm. on Med. Records  
Apr. 1967



## INFORMATION FOR DENTAL SERVICE (To be filled in by referring agency)

DIAGNOSIS

☐ CHECK HERE IF APPOINTED FOR DENTAL TREATMENT ONLY

TO FOR

DATE OF DENTAL SERVICE

31. DATE

32. SIGNATURE OF PHYSICIAN

## AUTHORIZATION

33. AGENT AUTHORIZED

34. DATE

35. SIGNATURE OF AUTHORIZING DENTIST

## 36. TREATMENT RECORD

DATE	DIAGNOSIS-TREATMENT-REMARKS	SIGNATURE
6/5/72	Prophy + some oral hygiene instruction. Pt speaks Arabic + French. Will bring interpreter next time. Also placed 206 temp #5. Cont prophy + OHI next time to me.	Lake
6/5/72	Pt education via interpreter. Pt to call for another prophy appt after June 19. At this appt determine treatment plan. Operative is needed #5, 19 maybe.	Lake
7/7/72	4 PA's - upper rt. Fin scaling. Patient has very little plaque without cleaning treatment. plan changed. Next Nov 20 AM NO #21	Labadie
7/26/72	See 273 X-ray. Transopulm. NOA #20 and NOA with NOA #21. also buccal cavity #20. Next # 5 MIA and # 21 and 15 O 4 H unit	Labadie





CLINICAL RECORD

HISTORY—Part I

NATURE AND DURATION OF COMPLAINTS (Include circumstance of admission)

Severe headaches + (L) sided weakness

History obtained through interpreter + old rec. 3/30/70

HISTORY OF PRESENT ILLNESSES

This 38 y/o Lebanese-born American seaman was attacked & knocked unconscious about 5 months ago, but returned to work. On board ship 3 months ago he slipped on oil slick fell on back of head + (L) side of body. Since that time he has had an occipital headache that at times is severe. He has lost strength in (L) extremities + during severe headaches has blurred vision. Shortly after fall he had hematemesis + 1 of bright red blood. He has no neck pain, no stiffness, no dizziness, no vertigo.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name, last, first, middle, grade, date, hospital or medical facility)

REGISTER NO.

182230

WARD NO.

Wakin, Hanna

HISTORY—Part I

Standard Form 504  
504-105

CLINICAL RECORD

PHYSICAL EXAMINATION

DATE OF EXAM.	HEIGHT	WEIGHT			TEMPERATURE	PULSE	BLOOD PRESSURE
		AVERAGE	MAXIMUM	PRESENT			

3/30/70

96

140/85

INSTRUCTIONS.—Describe (1) General Appearance and Mental Status; (2) Head and Neck (General); (3) Eyes; (4) Ears; (5) Nose; (6) Mouth; (7) Throat; (8) Teeth; (9) Chest (General); (10) Lungs; (11) Cardiovascular; (12) Abdomen; (13) Hernia; (14) Genitalia; (15) Rectum; (16) Prostate; (17) Back; (18) Extremities; (19) Neurological; (20) Skin; (21) Lymphatics.

- ① 33y/o W/M W/O W/O who speaks very poor English in NAD.
- ② Head & Neck - supple, no bruits, no lymphadenopathy
- ③ Eyes - no cataracts, PERLA, EOM intact, fundi normal
- ④ Ears - hearing grossly normal, TM's reflect light
- ⑤ Nose - nsa
- ⑥ Mouth & Throat - nsa
- ⑦ Lungs - clear to A & P
- ⑧ Heart - reg rhythm, II/VI short K<sub>1</sub> syst (m) heard best along LSB & 2nd RICS with no radiation to carotids or axilla
- ⑨ Abd - normal BS, no masses, tenderness or organomegaly
- ⑩ Genitalia - normal
- ⑪ Rectal - 2 + smooch, nontender prostate, stool guaiac neg

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

REGISTER NO.

103430

WARD NO.

PHYSICAL EXAMINATION

Standard Form 506

506-104

Wakim, H



## PHYSICAL EXAMINATION

⑫ Ext - no edema, pulse full & equal

⑬ Neurologic

1) Drilled w/ PPT

2) ~~Expt~~ cranial nerves

II - fundi normal

III - RCLLA

III, IV, VI - EOM intact, no nystagmus

V - normal sensory

VII - no facial palsy

VIII - normal hearing grossly  
no vertigo

IX, X - no dysphagia, normal gag

XI - good shrug

XII - tongue protrudes in midline

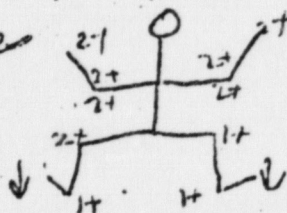
3) motor ↓ RUE + RLE

4) Cerebellar - FTM OK

5) Gait - normal

6) Sensory - normal pinprick

7) Reflexes



Imp No demyelinating disease  
subdural  
neoplasm

INITIAL IMPRESSION

Forbes  
Cunningham

SIGNATURE OF PHYSICIAN

CLINICAL RECORD		CONSULTATION SHEET	
TO: <i>Radiotherapy</i>		REQUEST FROM: <i>Neurology</i>	DATE OF REQUEST: <i>3/30/70</i>
REASON FOR REQUEST (Complaints and Findings) <i>384/8 man who had head trauma 3 months ago - now has occipital headaches + L sided weakness. Please do brain scan. Thank you.</i>			
PROVISIONAL DIAGNOSIS			
DOCTOR'S SIGNATURE: <i>Forbes</i>	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> RESIDE <input checked="" type="checkbox"/> ON CALL	<input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> ROUTINE
CONSULTATION REPORT			

4-3-70

BRAIN  
SCAN

Following intravenous injection of 10mc of Technetium 99M per-technetate multiple views of the skull reveal a normal isotope distribution with no evidence of localized lesions.

IMP: Normal brain scan.

Gordon Perlmutter, M.D.  
*508*

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle, grade; date, hospital or medical facility)		REGISTER NO. <i>183430</i>	WARD NO. <i>AB2</i>

*Wabim Hanna*

CONSULTATION SHEET  
Standard Form 513  
513-104



## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE	
3/24/70	<p>Neurology</p> <p>39yo Lebanese Seaman speaks little English. He had had injury last year (fall) &amp; again at Camp Bunker. Spinal X-rays, EEG and neurologic exam have been essentially normal.</p> <p>An attempt at treatment with Amitriptylene led to xerostomia and difficult urination and was discontinued 4 days ago.</p> <p>I feel he deserves admission for LP and Brain Scan, reevaluation and hopefully alleviation of symptoms.</p> <p>Cambridge</p>
3/30/70	<p>LP</p> <p>L-3-4 entered with initial tube of fluid clear &amp; colorless but remaining fluid had blood streaks. Opening pressure was 14.8 cm + closing 11cm. Fluid sent for routine studies.</p>

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name, last, first, middle, grade, date, hospital or medical facility)

Wakim Hanna

REGISTER NO.

183430

WARD NO.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-106

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

2/10/70 GAD - 39 y.o. Lebanese (D-) who 5 mo. PTA w.r.s.  
knocked unconscious 3 mos. ago fell on head & since then  
has had occipital headache, 10-15 min. @ a time  
worse when lying down & other features of  
neuro-lx. Has had no skull films EEG.  
PC is remarkable except for some  
to strength on the D. side; cerebellar intact  
the rest of the neuro exam is  
well.

Lump: Post-concussion syndrome.  
No subdural.

*Subdural*

*Camanga*

4/2/70 Pt has no h.p. results. Brain Scan  
is pending today. Headache has improved  
slightly. Will consider Psych Clinic visit

*Camanga*

4/4/70 Scan done - not available for viewing  
last night.

4/6/70 Brain Scan ungl. with Reexamine for  
7-8 min. and the large with convulsions,  
with some (large) and 4-5 min. *Camanga*



Standard Form 509  
(Rev. August 1954)  
Bureau of the Budget  
Circular 5-52

## CLINICAL RECORD

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

## DISCHARGE NOTE

DATE

Do not use this sheet for any purpose other than a discharge note

Diagnosis:

Pot Concussion - Syndrome

Duty Status:

F7D

Return Visit:

Date

June 20 Clinic

Medications (Drugs, dosage, frequency and amount prescribed):

Analgesic #2 ✓ 7 1/2 tabs 1.0 g 4h PRN Headache  
Hexantone 7 tabs 1.0 g 4h

Other Therapy (Physical therapy, special diet, etc; if none, so state):

Referral to: Public Health Nurse

nd

Social Work Service

r

## COUNSELING

YES NO N.A.

Patient informed of diagnosis and prognosis:

Patient instructed as to level of activity;

(e.g. climbing stairs, driving car, marital relations)

Patient instructed as to diet:

Patient instructed as to purpose of  
medications and treatment:

Operations and procedures explained to patient:

Abnormal tests explained to patient:

(Continue on reverse side)

OVER

S.D. Weger

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first,  
middle; grade; date; hospital or medical facility)

REGISTER NO.

183 130

WARD NO.

Weger, Hanna B.

DOCTOR'S PROGRESS NOTES  
Standard Form 509  
509-106

CLINICAL RECORD		NARRATIVE SUMMARY
DATE OF ADMISSION 4/23/73	DATE OF DISCHARGE 6/14/73	NUMBER OF DAYS HOSPITALIZED 42

(Sign and date at end of narrative)

HISTORY:

This is a 41 year old male who has been seen and followed at this hospital over the past three years with signs and symptoms of a herniated disc with left-sided radiculopathy. His condition has gradually worsened in regard to the back pain and the left radiculopathy. He has had a myelogram in 1970. A repeat was performed here with residual dye which was left in and was inconclusive. This dye was left in from his first myelogram. EMGs repeatedly show abnormality.

The previous history revealed that 3 1/2 years ago, on board ship, he injured his back when he fell in a puddle of oil. At that time he also cut his left leg. Since that time, patient has been having back problems. The previous history also revealed no known allergies and patient was not on any medications, except for intermittent analgesics for low back pain.

PHYSICAL EXAMINATION:

Vital signs within normal limits. Pertinent findings were limited to back and were as follows: The patient had multiple subcutaneous lipomas of the trunk. He had a protective gait favoring the left lower extremity. He was unable to toe or heel walk. Patient's trunk motion was restricted with pain in the lumbosacral level and down the posterior left lower extremity. The flip test and Lasegue tests were positive. Straight-leg-test on the right was positive at 80 degrees which was probably due to tight hamstrings. On the left, it was positive at 60 degrees which was due to sciatic radiation. There was weakness of his plantar flexors and extensor hallucis longus on the left. He had decreased muscle tone on the left including his left gluteus maximus. There was tenderness at the lumbosacral level in left ilio-lumbar area. Deep tendon reflexes were as follows: knee jerks +1 on the right and 0 on the left; ankle jerk 1 on the right and 0 on the left.

LAB AND XRAY EXAMINATION:

Chest xray within normal limits. Pantopaque was seen in the subarachnoid space. The urine on smear negative for acid-fast bacteria. VDRL was nonreactive. Urinalysis was within normal limits. CBC within normal limits. SMA 12 within normal limits except for an alk. phosphatase in the upper limits of normal. The electrolytes were also within normal limits. Acid phosphatase within normal limits.

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN continued/ad	DATE dict. 6/1/73	IDENTIFICATION NO.	ORGANIZATION AS
	REGISTER NO. 183 430		WARD NO. BD5

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

WAKIM, Hanna B.  
USPHS Hospital, Staten Island, New York 10304

NARRATIVE SUMMARY  
Standard Form 502  
502-108-04

2



3. Bureau of the Budget  
Circular 4-32

CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION 4/23/73	DATE OF DISCHARGE 6/4/73	NUMBER OF DAYS HOSPITALIZED 42	

(Sign and date at end of narrative)

-2-

COURSE IN HOSPITAL:

the following findings were noted.

The peroneus longus, gastrocnemius, quadriceps, all revealed decreased number motor units with normal form. The right gastrocnemius and quadriceps revealed all normal findings. The left anterior tibial revealed decreased number motor units with rare polyphasic. The right anterior tibial muscle, the extensor hallucis longus, the left extensor digitorum brevis and the extensor hallucis longus on the left revealed decreased number motor units with occasional polyphasic. The right extensor digitorum brevis revealed decreased number motor units with polyphasic. The left peroneus longus revealed slightly decreased number motor units with rare polyphasic. The conduction velocities were as follows: peroneal on the left was 41.3 meters per second. On the right, 45.6 meters per second. Delay at the ankle on the peroneal was 4.7 ml.sec. on the left and 5.5 ml.sec. on the right. The conduction velocity of the tibial nerve on the left was 43 meters per second; on the right 46.5 meters per second. Delay at the ankle of the tibial nerve on the left was 6½ ml. sec on the right 6 ml.sec. The amplitude was as follows: peroneal on the left was 1 meter per second; tibial on the left was 6 meters per second. Tibial on the right was 1/2 meter per second and the amplitude of the tibial at the ankle was 1 meter per second on the right.

The patient was treated with intermittent pelvic traction and bed rest and analgesics and muscle relaxants. He responded poorly to these modalities. The patient was seen by the Chief of Orthopedics, Dr. Puria, who, after examining the patient and reviewing the history, thought that he showed signs of a chronic lumbosacral sprain with left radiculopathy and probably had a herniated nucleus pulposus. He recommended that the patient have a laminectomy in view of the long chronicity and also because of his present findings. This was discussed at length with the patient who felt that laminectomy was a formidable procedure. It was also explained to the patient that the weakness in his left leg which he has at present, probably would return with laminectomy and disc excision, would probably stop the progression of weakness in left lower extremity. Since this weakness has been present for the last 3½ years, it is highly unlikely that any motor

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN continued/ad	DATE dict. 6/1/73	IDENTIFICATION NO.	ORGANIZATION AS
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO. 183 430	WARD NO. BD 5

WAXIM, Hanna B.  
USPHS Hospital, Staten Island, New York 10304

NARRATIVE SUMMARY  
Standard Form 502  
502-108 04

CLINICAL RECORD		NARRATIVE SUMMARY
DATE OF ADMISSION 4/23/73	DATE OF DISCHARGE 6/4/73	NUMBER OF DAYS HOSPITALIZED 42

(Sign and date at end of narrative)

-3-

improvement would be obtained from a laminectomy and disc excision. We told the patient that a laminectomy and disc excision would help the back pain and probably relieve all the lumbosacral pain that the patient is having. In view of this, the patient thought that he would like to discuss this matter with his two sons who live in Lebanon. Therefore, he requested discharge from the hospital. He will return to the O.P. Dept. in October 1973 after discussion of the problem with his two sons as to the aforementioned operation. The patient is therefore being discharged on 6/4/73. Not fit for duty. It was recommended that he wear a lumbosacral corset and do Williams exercises at home. He will return to the O.P. Clinic to see Dr. Guagliardo in October 1973.

FINAL DIAGNOSIS:

Chronic lumbosacral strain  
Left radiculopathy

R/O herniated lumbar disc

OPERATIONS:

None.

RECOMMENDATIONS:

Not fit for duty.

Recommendations as above.

Medications: Multivitamins 1 tab. po q.a.m.  
Valium 5 mg. po b.i.d.  
Phenylbutazone 1 tablet po bid.  
(after meals with glass of milk)  
APC with codeine 30 mg. po q 4 hr.  
for very severe pain.  
Tylenol 10 mg. po q 4 hours for  
minor pain.

Use duplicate copies of this form (Standard Form 502) if more space is required

SIGNATURE OF PHYSICIAN <i>Harvey Dennis, MD</i> /s/ Harvey Dennis, M.D., Surgeon(R)/ad	DATE dict. 6/1/73	IDENTIFICATION NO.	ORGANIZATION AS
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO. 183 430	WARD NO. BD 5

WAKIM, Hanna B.  
USPHS Hospital, Staten Island, New York 10304

NARRATIVE SUMMARY  
Standard Form 502  
502-108-04

cc: to patient 439 82nd St., Brooklyn, N.Y. 11209 (to take to/Lebanon)  
doctor in

4



NAKIM, HANNA  
183430  
BD-5

HSN-140-1  
5-49

PROGRESS REPORT -  
PHYSICAL THERAPY AND  
OCCUPATIONAL THERAPY

(FORMERLY PHS-3798-1)

ORIGINATING SERVICE

☒ P.T.

☐ O.T.

PATIENT'S IDENTIFICATION (For typed or written entries give name, register no., ward no., date)

PROGRESS REPORT (Use reverse side for additional space) 4-24-73

pt is a 41 yrd old white male whose chief complaint is pain in the low back area and sometimes in the thoracic area. sensation is N in both LE's. ROM of the trunk is limited by pain, ROM of bilateral LE's WNL except pt has tight hamstrings bilaterally. muscle strength of abdominal muscles is P, trunk extensors G, LE strength: hip flexors (R) G+, (L) G-; hip abd. (R) F+, (L) F; adductors are N bilaterally; hip extensors (R) G+ (L) G-; hip rotation is G bilaterally. (CONTIN)

PATIENT'S IDENTIFICATION (For typed or written entries give name, register no., ward no., date)

ORIGINATING SERVICE

☒ P.T.

☐ O.T.

PROGRESS REPORT (Use reverse side for additional space)

knee flexion (R) G+ (L) G; knee ext (R) N (L) G-; (L) dorsiflexors, invertors, evertors; plantar flexors F+ -> G-; (R) dorsiflexors, invertors, evertors; plantar flexion G+ -> N. There is also weakness of (L) UE muscles which range F -> F+. (R) UE ranges G -> N. Pt has a + patellar tendon reflex on (R) LE. There is a + straight leg raising in the (L) at about 60°. There is an I in lumbar curve, muscle spasm is present bilaterally in the lumboparavertebral & thoracic paravertebral muscles & R. There is pain in the psoas & iliacus present mostly. (CONTINUED) 19

HSN-140-1  
5-49

DOCTOR'S PROGRESS NOTES  
(Sign all notes)

DATE

5.24/23

This patient has been seen and followed her over the past 3 yrs. with signs & symptoms of herniated disc with left sided radiculopathy. Her condition has gradually worsened in regards to the back pain & left radiculopathy. We tried a myelogram in January - Report was done here with the removal of dye & was inconclusive. EMGs repeatedly show abnormalities.

Exam. Multiple subcutaneous lipomas of the trunk. - Protective gait favoring LHE. Guarding for on back wall. Thorax motion restricted with pain in L5 level & posterior iliac area on the left.

Flip test & scotal tongue positive

STAR / RT - 80% right handings

RT 60% scotic femur sign

Hypertonic & glenohumeral flexion & EHL of the left

Hypertonic tone muscles on the left including left gluteus

Tenderness L5 level & left ilio-lumbar area

RT - 1+ RA D.H.

RT - 1+ RA D.H.

Exam. Clinically L5 strain & left radiculopathy.

Probable NRP.

Recommend: In view of the chronicity & present findings

I recommend surgery & Patient is amenable and

agreeable to surgery as proposed

*[Signature]*



CLINICAL RECORD

PHYSICAL THERAPY PROGRESS REPORTS (Backing Sheet)

n, Hanna AS

30 6/1/73 B05

HSM-140-1  
5-69PROGRESS REPORT-  
PHYSICAL THERAPY AND  
OCCUPATIONAL THERAPY

(FORMERLY PHS-3798-1)

ORIGINATING SERVICE

PATIENT'S IDENTIFICATION (For typed or written entries give name, register  
no., ward no., date)☒ P.T.☐ O.T.

PROGRESS REPORT (Use reverse side for additional space)

patellar tendon & achilles tendon reflex bilaterally  
spasm is present bilaterally in lower paravertebral  
muscles (L > R) Pt ambulates c a cane. Pt shows  
an ↑ lumbar lordosis. Rx program consists of  
① hot packs & medcollator to lower lumbar & thoracic  
area ② conservative exercises for low back pain.  
Rx program may be modified to include ice  
massage.

Janet Lipp LPT  
arroyo

38

R. B. /

37

Sara

38

H. M. M.

39

omit

P  
REGISTERED

W. W. W. /

HSM-140-2  
3-69

(FORMERLY PHS-3798-2)

PHYSICAL THERAPY  
PROGRESS REPORTS  
(Backing Sheet)

Standard Form 502  
Rev. August 1954  
By Bureau of the Budget  
Circular A-32

CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED	
12-17-73	2-12-74	57	

(Sign and date at end of narrative)

## HISTORY:

This patient is a 42 year old American seaman, who was injured aboard ship in November, 1969, when he slipped in grease and fell, injuring his back and striking his head against the deck. He was taken off the ship in Okinawa and from there he was evacuated to this facility. His initial treatment and diagnosis was complicated by language difficulties and diffuse symptoms. He was admitted on 12-17-73 with weakness in his left lower extremity, and also he had headaches and weakness in his left upper extremity as well. He had pain also over the lumbosacral area. He was diagnosed as postconcussion syndrome in 1970 and in 1973 he was diagnosed as having a herniated nucleus pulposus. At that time he decided that he would speak to his family before agreeing to surgery and having spoken to his family and the symptoms having persisted and progressed, the patient was readmitted on 12-17-73 for surgery on his lumbosacral spine. The patient's previous history reveals he is an American Seaman. He does not smoke or drink. He has been in generally good health, previous to his accident. He was diagnosed as a postconcussion syndrome in 1970, and having a herniated nucleus pulposus in April, 1973. Review of systems: Occasional dizziness and headaches; occasional blurred vision; occasional tinnitus. Otherwise, his review of systems was non-contributory.

## PHYSICAL EXAMINATION:

Revealed a subcutaneous mass on his back.

He also had an antalgic gait. He was

unable to toe or heel walk. He had decreased range of motion of his spine. Straight leg raises positive on the left at 45 degrees. Decreased strength in dorsiflexion on the left and also plantar flexion of the left foot. Decreased muscle tone of left lower extremity. Decreased left ankle jerk when compared to the right side; otherwise his reflexes were essentially within normal limits.

## LAB AND X-RAY EXAMINATIONS:

EKG within normal limits. Urinalysis was within normal limits. Electrolytes were

within normal limits. CBC essentially within normal limits. X-ray of chest revealed no evidence of active cardiac or pulmonary disease. SMA 12 was essentially within normal limits.

## COURSE IN HOSPITAL:

The patient was seen by Dr. Puria, who is Chief of Orthopedic Service. He reviewed

his past medical history and medical records and also his previous notes on past examinations on this patient. He also reviewed his X-rays and fluoroscopy and myelogram x-rays showing the residual dye in this patient's spinal column. And,

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
Continued/ch	Dict.	2-12-74	AS
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.
		183430	BD5

WAKEM, HANNA B.

USPHS HOSPITAL, STATEN ISLAND, NY, 10304

NARRATIVE SUMMARY

Standard Form 502

502-103-04



CLINICAL RECORD		NARRATIVE SUMMARY
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED
12-17-73	2-12-74	57

(Sign and date at end of narrative)

-2-

also the patient's abnormal EMG findings from his previous hospital admission. Dr. Purlia recommended that he be scheduled for laminectomy for decompression of his L4-L5 interspace and L5-S1 interspace as possible disc protrusions would be in that area and spinal fusion would be performed if deemed necessary at the time of operation. The patient was amenable and agreeable to surgery. Dr. Purlia thought he had a chronic low back derangement with left side radiculopathy and there was also residual Pantopaque dye in the spinal column from the previous myelogram. The patient was scheduled for surgery. He was taken to surgery on 12-21-73 where laminectomy of the L4-L5 intervertebral and S1 vertebra were done. There was also disc excisions of the L4-L5 intervertebral disc and the L5-S1 intervertebral discs which were found protruding. It was then found that the patient had an unstable spine and a H-graft spinal arthrodesis of L4 to S1 vertebrae was performed. Patient had a slow but uneventful recovery from his operation. He was given a lumbosacral corset postoperatively to add stability to the spine while the fusion was taking effect. By the time of discharge, the patient had been investigated for the possibility of brain damage or involvement of the central nervous system from his head trauma. Although the patient still gets headaches, he is still diagnosed as postconcussion syndrome and was told that at this time he can expect to have recurrent headaches, from the amount of damage which had been done previously in 1969. Also, he was told that he should continue the exercises taught to him in Physical Therapy. At this time on 2-12-74 the patient is able to ambulate unsteadily but on crutches. It was felt that more muscle strengthening would be needed, but that the patient can do the exercise at home. He can visit the Physical Therapy Department as an Out Patient a few times a week and essentially he had reached the maximal amount of hospital benefits.

FINAL DIAGNOSIS:

1. Instability of the lumbosacral spine from L4 to S1
2. Postconcussion syndrome

OPERATIONS:

Laminectomy L4-L5 and L5-S1, H graft arthrodesis L4 to S1, 12-21-73

CONDITION ON DISCHARGE:

NOT FIT FOR DUTY

RECOMMENDATIONS:

He will ambulate with a lumbosacral corset. No heavy lifting, bending, stooping or sitting in one place or standing in one place for any

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
Continued/ch	Dict.	2-12-74	AS
PATIENT'S IDENTIFICATION (For typed or written entries give: Name--last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.
		183430	BD5

WAKIM, HANNA B.  
USPHS HOSPITAL, STATEN ISLAND, NY, 10304

NARRATIVE SUMMARY  
Standard Form 502  
502-108-04

3

CLINICAL RECORD		NARRATIVE SUMMARY	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED	
12-17-73	2-12-74	27	

(Sign and date at end of narrative)

-3-

RECOMMENDATIONS (CONTINUED):

long period of time. He will be followed as an Out Patient in the Orthopedic Clinic. He also will continue the exercises taught to him by the Physical therapist which consists mainly of strengthening his paraspinal muscles and also his arm and leg muscles. He was also told that he may have residual weakness in his left lower extremity and will have recurrent headaches and dizziness, which is secondary to his head injury in 1969. Patient is discharged on pain medication - codeine 30 mg for severe pain and Tylenol 10 grains for mild pain. He is also discharged on multiple vitamins and Sebutohe shampoo for dermatitis of his scalp.

Patient will return to Orthopedic Clinic on 3-11-74. He will also be seen in Dermatology Clinic for benign skin condition.

*Harvey Dennis* (Use only if space on this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
/s/ HARVEY DENNIS, SURG (R)/ch	Dict. 2-12-74		AS
PATIENT'S IDENTIFICATION (For typed or written entries give: Name-last, first, middle, grade, date, hospital or medical facility)		REGISTER NO.	WARD NO.
		183430	BD5

WAKIM, HANNA B.  
USPHS HOSPITAL, STATEN ISLAND, NY, 10304

NARRATIVE SUMMARY  
Standard Form 502  
502-108-04

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## CLINICAL RECORD

## OPERATION REPORT

## PREOPERATIVE DIAGNOSIS

UNSTABLE LUMBOSACRAL SPINE, POSSIBLE HERNIATED NUCLEUS PULPOSUS.

Possible A.N.P. L4-5; L5-S1 Left	
SURGEON Dr. Goodrich	FIRST ASSISTANT Dr. Hare, Reales
ANESTHETIST Dr. Hare / Dr. King	ANESTHETIC Durepnept, Nitro, N2O, O2
SURGICAL NURSE Dr. Lewis / Miss Bottoman	INSTRUMENT NURSE Miss Gathrop
OPERATIVE DIAGNOSES	TIME OPERATION BEGAN 2:25 PM
DRAINS (Name and number) Nemovac	TIME OPERATION COMPLETED 5:00 PM
	SPONGE COUNT VERIFIED yes

## POSTOPERATIVE DIAGNOSIS

Chronic lumbosacral derangement = left radiculopathy

MATERIAL FORWARDED TO LABORATORY FOR EXAMINATION

## OPERATION PERFORMED

Exploration of L4-5; L5-S1 -  
N. graft fusion to L4-5 S1; left L5-S1 Disc Cyst

DESCRIPTION OF OPERATION (Type of culture used, gross findings, etc.)

ANESTHESIA General

MAJOR	MINOR	DATE OF OPERATION
		12-21-73

A midline incision was made over the spinous processes of L4, 5 and S1. A second knife was used to dissect the subcutaneous tissues. The electrocautery was then used to dissect the periosteum from the spinous processes of L4, 5 and S1. After this was accomplished bilaterally, by the use of twisted gauzes, the periosteum was dissected off the spinous processes and the lamina of the vertebra L4, 5 and S1. This was done bilaterally. After this was done, hemostasis was obtained. A curette was used to free up the tissues on the lamina and over the ligamentum flavum. The ligamentum flavum on the left of interspace L5S1 was then tented up and an incision was made in the ligamentum flavum; after the ligamentum flavum was cut through and by the use of cotton pledgets then retracted the spinal cord and dura away from the operative field while the remainder of the ligamentum flavum was removed. After this was done the nerve root at the L4 L5 level was explored. It was found there was no impingement on this nerve root. This was retracted medially along with the cord and the posterior longitudinal ligament was noted to be intact. There was no evidence that this profusion at the level of L4-5. The same procedure was done at L5-S1 level. The ligamentum flavum was removed and the cord and nerve root were retracted. Again, the posterior longitudinal ligament was intact. There was no evidence of disc profusion at this level. Prior to the procedure it was found there was excessive motion at the level of L5-S1 and at the level of L4-5. We found

SIGNATURE OF SURGEON

DATE  
Dict. 12-21-73

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)

REGISTER NO. 183430

WARD NO. 805

OPERATION REPORT  
Standard Form 516  
516-104

WATKINS HOSPITAL, STATEN ISLAND, NY, 10304

Watkins, Nanna

A-3/42

15

-2-

no evidence of herniated nucleus pulposus. A second incision over the left iliac crest was made. A H-graft was removed, as well as some ~~anterior~~ cortical strips and some cancellous bone. The H-graft was fashioned as well as the spinous processes of L5, S1 and L4. The H-graft was placed ~~beneath~~ as its centrum with the superior portion of the H connecting the L4 vertebra and the inferior portion connecting L5-S1. Cancellous cortical strips were laid in between the area. The back was then slightly extended and muscles were pulled over the graft. The fascia was closed with #0 chromic layer by layer. The subcutaneous tissue was closed with plain and skin closed with #3-0 nylon. The left hip area was then cleaned, had its fascia, etc. closed in the usual manner with the skin closed with nylon. One hemovac drain was inserted. The estimated blood loss was 800 cc with approximately 3000 cc of fluid given at surgery; no blood given. Patient was in satisfactory condition at the end of the procedure.

*Joseph P. Guagliardo, M.D.*  
JOSEPH P. GUAGLIARDO, M.D., SURGEON (R)/ch

Dictated 12-21-73

WALKER, HANNA  
USPHS HOSPITAL, STATEN ISLAND, NY, 10304

183430 BD5



ALASKA STEAMSHIP COMPANY, AGENTS  
SEAMAN'S WAGE VOUCHER

1424

142a

1511

COURT  
N. Y.

- 01 MASTER  
02 PILOT  
03 C. MATE  
04 2 MATE  
05 3 MATE  
06 RADIO  
07 RADIO W/RADAR  
08 RADIO ELECT  
09 PURSER

- 10 BOSN.  
11 CARPENTER  
12 W/D  
13 AB M/M  
14 AB B/D  
15 AB SMN  
16 ORD. SMN  
17 C ENGR.  
18 1 ENGR.

- 19 2 ENGR.  
20 3 ENGR.  
21 DAY 3RD  
22 ELECTR.  
23 2 ELECTR.  
24 DK ENG.  
25 OILER  
26 FR. & W/T  
27 WIPER

VESSEL SS SIOUX FALLS VICTORY VOYAGE NFA 15 DATE 12-5 19 69 PORT NAME Hanna B. WAKEM RATING O.S. SS # 051 46 0750 PHC PERMANENT ADDRESS  CITY  STATE  ZIP CODE 

WAGES EARNED

10% BONUS  
100% BONUS

P &amp; I #

TERMINATION  
CODE

SUBSISTENCE

BOARD  
ROOM

FROM	TO	RATE	MONTHS	DAYS	AMOUNT	GROUP TOTALS
10-03-69	12-04-69	475.50	2	2	981 11	981 11
35 10-03-69	11-23-69	475.50	1	21	80 84	
36 11-15-69	11-26-69	475.50		12	190 20	271 04
RECAP OF OVERTIME (PORT TIME ONLY)						
DATE	HOURS	RATE	CODE	HOURS	RATE	AMOUNT
			V	120	2.46	296 43
TOTAL OVERTIME HOURS						
ADDITIONAL AMOUNTS						
TAXABLE CASH ITEMS						
SPLIT WAGES						
MOVES						
PILOTAGE						
FROM	TO	DAYS	RATE	AMOUNT		
TOTAL TAXABLE EARNINGS						1518 58

EARNINGS SUBJECT TO F.I.C.A. TAXABLE EARNINGS PLUS	63	ACTUAL DAYS @ \$ 7.00	PER DAY = \$	1624.18	77 96
WITHHOLDING TAX	NO. OF EXEMPTIONS	1 - 1	ACTUAL DAYS	63	173 05
WELFARE (1% OF F.I.C.A. GROSS - MHA, MSD, SUP. & MSA ONLY)					16 24
CASH ADVANCES				170 00	
ALLOTMENTS				400 00	
SLOP CHEST PURCHASES				20 33	
MISCELLANEOUS DEDUCTIONS		M			
FINES		F			
OTHERS (DETAIL)					
TOTAL DEDUCTIONS					590 33
SUB TOTAL					290 23
AMOUNT					857 58
BALANCE DUE					691 00

TRANSPORTATION FROM  TO 

RECEIVED PAYMENT IN FULL

I CERTIFY THAT THIS PAYROLL IS TRUE AND CORRECT.

SIGNED  PAYEEPAID IN FULL BEFORE ME IN  
ACCORDANCE WITH THE ABOVE

SIGNATURE

PURSER  
TITLEU. S. SHIPPING COMMISSIONER  
OR/ U. S. CONSUL

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3  
4 HANNA WAKIM,

5 Plaintiff,

6 -vs-

7 UNITED STATES OF AMERICA,

8 Defendant.  
9

No. 70 Civ. 2848 GJS

MEMORANDUM OPINION

10 Paul C. Matthews,  
11 11 Broadway,  
12 New York, N. Y. 10004,

Attorney for Plaintiff.

13 Zock, Petrie, Reid, Curtin & Byrnes,  
14 Edwin K. Reid,  
15 19 Rector Street,  
16 New York, N. Y. 10006,

Attorney for Defendant.

17 SOLOMON, Judge:

18 I find that plaintiff failed to prove that he was  
19 injured in an accident on the SS SIOUX FALLS VICTORY on  
20 November 26, 1969, or at any other time during the voyage  
21 of that vessel.

22 I further find that any injuries that plaintiff did  
23 sustain on that voyage resulted from a mugging and robbery  
24 when plaintiff was in Colon, Panama Canal Zone, on or  
25 about October 15, 1969. As plaintiff, himself, admits  
26 the injuries from that mugging were not serious and did  
27 not prevent him from performing all the duties of his job.  
28 Nevertheless, in early December, 1969, while the vessel  
29 was in Okinawa, plaintiff left the vessel to obtain medical  
30 attention.

31 I find that the condition from which plaintiff now  
32 suffers may have resulted from the mugging, but did not



1 result from any accident or injury on the vessel and that  
2 all, or practically all, of his original complaints were  
3 functional rather than physical. Although plaintiff has  
4 and is exaggerating his injuries, some of these injuries  
5 may have been caused by a recent operation which was not  
6 completely successful. This operation in my view resulted  
7 from misinformation imparted by the plaintiff to the medical  
8 and hospital staffs either deliberately or because of  
9 plaintiff's functional ailments. I believe, however,  
10 that plaintiff understood the English language and could  
11 either express himself in English or could convey his  
12 meaning to people who only spoke English.

13 There is no merit in the contention that plaintiff  
14 is entitled to counsel fees and expenses for wrongfully  
15 withholding maintenance from plaintiff after April, 1970.

16 I do not pass on whether plaintiff may be entitled  
17 to some maintenance in addition to the amounts he has  
18 already received.

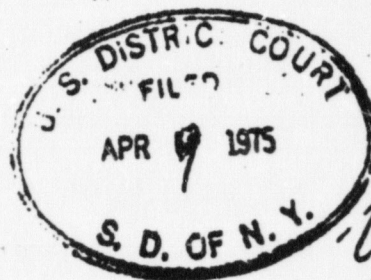
19 This opinion shall constitute findings of fact and  
20 conclusions of law under F.R.Civ.P. 52(a).

21 Counsel for defendant shall prepare an appropriate  
22 judgment in accordance with this memorandum opinion.

23 Dated this 24th day of January, 1975.

24 Gus J. Solomon  
25 United States District Judge  
26

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK



3  
4 HANNA WAKIM,

5 Plaintiff,

6 -vs-

7 UNITED STATES OF AMERICA,

8 Defendant.  
9

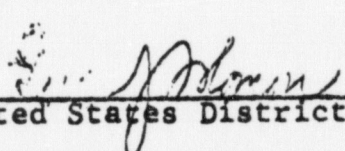
10 No. 70 Civ. 2848 GJS

11 AMENDED JUDGMENT

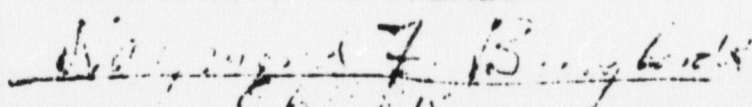
12 Based on the findings of fact and conclusions of law  
13 in the opinion of the Court dated January 24th, 1975, all  
14 of plaintiff's claims, other than the claim for maintenance  
15 which is specifically reserved, are dismissed without costs.

16 This judgment is ordered entered because there is no  
17 just reason for delay. [Fed. R. Civ. P. 54(b)]

18 Dated this 4<sup>th</sup> day of April 1975.

19   
United States District Judge

20  
21  
22  
23  
24 JUDGMENT ENTERED

25   
26



MATTHEWS AP. XXXX

1599

STATE OF NEW YORK )  
: SS.  
COUNTY OF NEW YORK )

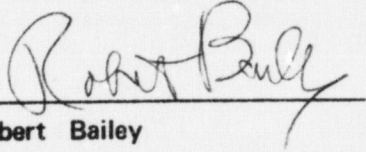
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 24 day of October 1975 deponent served the within Appendix upon:

ZOCK PETRIE REID CURTIN & BYRNES

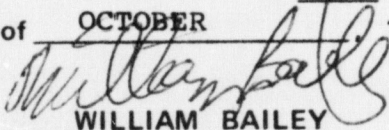
attorney(s) for appellee

in this action, at 19 Rechor Street, NYC

the address(es) designated by said attorney(s) for that purpose by depositing ~~three copies~~ a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
Robert Bailey

Sworn to before me, this 24  
day of OCTOBER, 1975

  
WILLIAM BAILEY

Notary Public, State of New York  
No. 43-0132945

Qualified in Richmond County  
Commission Expires March 30, 1976